THE FEDERAL GOVERNMENT AND THE LIQUOR TRAFFIC

JOHNSON

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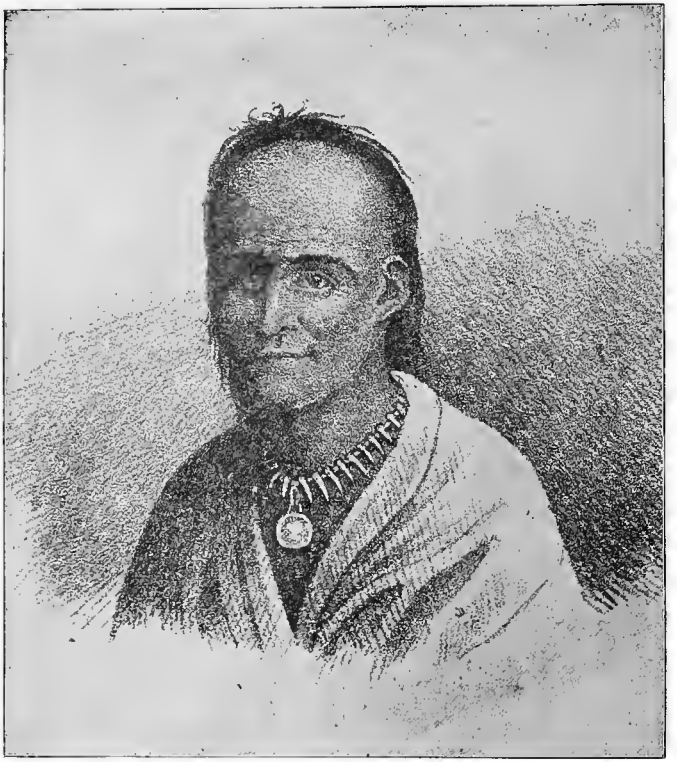

MECHECUNNAQUA.

The original "Christian lobbyist." Mechecunnaqua, or "Little Turtle," promoted the first law ever passed by Congress looking to the prohibition of the liquor traffic. The above is a reproduction of a lithographic portrait in W. A. Brice's "History of Ft. Wayne" published in 1868. The original painting from which the lithograph was taken was made by Gilbert Stuart in Philadelphia in 1797. This original painting was long since destroyed by fire.

THE FEDERAL GOVERNMENT AND THE LIQUOR TRAFFIC

By

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Published by
The American Issue Publishing Company
Westerville, Ohio

Sam Roberts, John Morrison, Randolph W. Cathay, George Williams and Charles Escalanti cheerfully laid down their lives in assisting my efforts to protect the Children of the Forest from licensed and unlicensed cutthroats who would take advantage of their weakness to debauch them with the white man's whisky. To these lofty spirits this volume is reverently and affectionately dedicated.

THE AUTHOR

Denver, Col., August 20, 1910

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The Federal Government and the Liquor Traffic.

CHAPTER I.

In jungle times—in the Stone Age—might was the only law of conduct. The wolf ate the dog, the dog ate the rabbit, and the bear ate all three. Bear and the man attacked each other as advantage presented itself. The right to assault and subjugate woman was among the most treasured prerogatives of the personal liberty code. Wives were secured by conquest and capture, only to be killed to make meat for the hyenas when they had served the purpose of their master. The doctrine that that government is best which governs least was in the flower of its development—there was no government. This must have been the par excellence of all rule, granting the correctness of the maxim stated. Breech clouts, a cave and a club constituted man's equipment for the duties and responsibilities of life. Stealing from one another made up the commerce of the age. The elements of science and religion had not yet been born. If two plus two equalled four, nobody knew it. Complete personal liberty, the right to do what one's passions and impulses dictated regardless of the effect upon anyone on earth, was unques-

tioned by man or beast. But, as a cow learns by experience to consider the barbed fence in planning her movements, just so man began to learn by experience that his acts, in the main, had some relation to the acts of other men. Herein began the study of individual rights. The elemental reasoning powers which prompt the buffalo to form a herd, the ants to construct a hill, the fish to form a school and geese to flock, led men to develop organization for mutual benefit and advantage. The constituent parts of any social organization whatsoever are made up of contributions of individual rights. Men first relinquished the personal right to kill one another. Then followed the abandonment of the right to steal; then of the right to assault. The right to torture, the right to annoy, the right to spread disease, the right to rape, the right to own more than one wife, the right to appear unclothed in public, were surrendered one by one. These prerogatives were not given up without a struggle. With each new innovation a guttural roar would go up from the many who clung to their caves, their breech clouts, and their right to kill and steal. The wiser monkeys, in the interest of the herd, compel a degree of good behavior on the part of the conservatives and recalcitrants of the flock. Just so the primeval man hammered the rebellious Breech Clouts into submission and took from him contributions of individual prerogatives which the latter mistook for personal liberties. Throughout all the ages Breech Clouts has rent the air with his bellow of protest against progress. Breech Clouts burned Gior-

dano Bruno at the stake for saying that the earth was round. Breech Clouts erected the Inquisition in Spain and the scaffold in Massachusetts. Breech Clouts fought progress all the way around the earth before he would give up polygamy. Breech Clouts drenched continents in blood ere he would yield the "right" to enslave his weaker neighbor. And now Breech Clouts is in the ditches defending his alleged right to debauch and rob his fellow by poisoned drinks—the same old Breech Clouts who lived in the primal cave, arrayed in nothing, and who lived by plundering his industrious neighbor.

It is a long tedious journey from this government of and by the club of jungle days to the modern idea that it is the duty of law to protect, rather than to starve and enslave, the weak. The idea is not yet fully enthroned, for we find ourselves in the midst of a struggle over the doctrine that the state has the right to sell one a commission to rob and cheat his fellow in its name; the theory that the state has the right to issue letters of marque and reprisal against its own citizens. In the former days the weak were subjugated with a club at the individual caprice of the strong. In these latter days, the idea has been modified into a plan by which the strong commissions one of its number to plunder and debauch the weak on a percentage basis or in return for a stated revenue. The whole duty of the state to its weaker members has thus become the burning issue of the twentieth century throughout the world.

It is not the purpose, in this connection, to attempt to trace the development of law from its beginning. Such would require volumes in itself. It is only intended in this chapter to make clear the constitutional limitations of the Federal Government of the United States in dealing with the liquor problem, and the corresponding powers of the states, in respect to the same subject. The Constitution of the United States is the fruitage of the Anglo-Saxon struggle with the Norman Kings for liberty, a struggle of eight hundred and forty years. The English constitution, developed in this contest, was designed only to protect the people from the King. It had no relation to the dealings of the people among themselves.

Neither did it contemplate protection of the people from Parliament or from the courts. So, when the Tudor Kings sought to re-enslave the people, they made use of a corrupt parliament to accomplish the end in view. It was under this English Constitution that Sir John Hawkins initiated the British trade in African slavery, selling slaves at his own price to the Spanish settlements in America at the mouth of his ships' cannon. And Sir John was knighted by Queen Elizabeth for his prowess and diligence in extending British trade. It was, moreover, under this constitution, King, Parliament and courts, that the American colonists were oppressed and goaded into declaring themselves free and independent in 1776. And so, when this new Democracy, for the first time in history, grasped all the reins of government—legislative, executive and

judicial—it set to work to devise metes and bounds for these three functions. This involved the drafting of constitutions, state and national, the first written constitutions in the history of the world. These documents were prepared upon the theory that all power was in the people and that these departments of government were created by the people who conferred upon them, in this constitution, certain specific powers and no more. No legislative power was conferred upon the executive or upon the courts. The legislature had no judicial or executive power. The executive was the sole custodian of executive functions. The people retained all authority not specifically delegated in the constitution. They even retained power to revoke or change the constitution; which made it merely the expressed will of the people—instructions to the three branches of their government.

The state constitutions were adopted first. And, in the making thereof, the influence of the landed property class predominated. It was thus that the interests of property were diligently conserved in the writing of these state documents. True, all contained the Bill of Rights, which had grown from five paragraphs in the Magna Charta to thirteen in the Bill of Rights of 1689. Nobody would dispute the Bill of Rights any more than he would repudiate the Ten Commandments. So the original provisions of the Bill of Rights appeared in all constitutions, elaborated to sixteen items in the Virginia Constitution and to thirty in that of Massachusetts. When it came to the formation of the Federal Con-

stitution in 1787, different influences prevailed. It had required years of agitating on the part of such pamphleteers as Alexander Hamilton, John Jay and John Adams to lead the people to consent to any government at all in the place of the Confederacy. When they were finally brought to the point, reluctantly, of consenting to the constitutional convention, they guarded its every act with the most jealous care. The state governments were something close at home where they could be watched. But in days when travel was limited to the horse, the Federal Government was a thing afar off, where it could not be looked after, and upon which no unnecessary authority could be safely conferred. They did not propose to have a remote authority meddling with their local affairs. This feeling was well expressed in Thomas Jefferson's oft repeated dictum, "Thus far shalt thou go and no farther." And so the people laid down in their Federal Constitution the precise powers conferred upon the different branches of their government. A few things upon which they could not agree, they ignored. Posterity paid the cost. It required the Civil War of 1861-5 to settle the question of State Sovereignty—one of those things which the people dodged in 1787.

In view of the vociferous talk against "sumptuary legislation" whenever it is proposed to protect person and property against depredations of the liquor dealer, it is interesting to note that two attempts to induce the Constitutional Convention to authorize Con-

gress "to enact sumptuary laws" were defeated. An attempt was made on August 20, 1787, when Mr. Mason made such a motion.* He repeated the motion on September 13, and lost again.† Sumptuary legislation then referred only to such matters as style of clothing, kind of food, cost of living, etc. In these latter days politicians have applied the term to such matters as keeping saloons, gambling shops, lotteries and all sorts of dives. The modern cry against "sumptuary legislation" is purely a plea in behalf of the criminal classes who desire to traffic in debauchery. For an hundred years, there has never been any serious demand for sumptuary legislation on the part of anybody. It is as dead as the Act of Attainder, and has been for a century. Any protest against legislation to reduce crime and poverty on the ground that it is "sumptuary" legislation is suggestive of cant in its most aggravated form.

In the Constitution Congress was given power‡ "to lay and collect taxes, duties, imposts, and excises." Power was also given Congress§ "to regulate commerce with foreign nations, and among the several states, and

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* The motion was defeated by a vote of 8 to 3. Delaware, Georgia and Maryland voted "Yes." New Hampshire Connecticut, Massachusetts, New Jersey, Pennsylvania, North Carolina, South Carolina and Virginia voted "No."

† Madison Papers, Vol. III, pp. 1369, 1568.

‡ Constitution, Art. 1, Sec. 8, par. 1.

§ Id. par. 3.

with Indian tribes." Further than this, the Constitution* provides that "the powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." Under the constitution, therefore, the powers of the Federal Government in dealing with the liquor traffic are plainly limited to the matter of taxation, customs and internal revenue, and to the traffic therein between the states and with Indian tribes. Congress is, therefore, shorn of all authority to exercise police powers except upon the high seas† and in territory‡ exclusively under Federal control. The Fourteenth amendment, adopted since the Civil War, has been invoked to compel the states to allow the operation of saloons. This amendment reads: "No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, nor deny to any person within its jurisdiction the equal protection of the laws." This provision was adopted to safeguard the rights of the freedmen of the South, but the liquor dealers seized upon it as a shelter from the prohibition laws of the states. The Federal courts were petitioned to restrain the states in their attempts to "abridge the privileges or immunities of the citizens" through their acts prohibiting the beverage liquor traffic. The courts, however, uniformly refused to come to the relief of the liquor dealers, affirming that

* Amendment, Article X.

† Constitution, Art. I, Sec. 8, par. 9.

‡ Id., par. 16.

the right to sell intoxicating liquors was not one of the privileges and immunities of citizens as contemplated by the Fourteenth amendment,* and that the Federal courts have nothing to do with the exercise of police powers on the part of the state.

While the Federal courts thus clearly decline to interfere with the states in the exercise of police powers, they just as clearly support Congress in its authority to "regulate commerce * * * among the several States." In construing this provision, the courts have affirmed the right of Congress to enact police regulation over domain or over persons within its exclusive jurisdiction, as in Alaska,† or even to the adoption of local option legislation in such territory. It is further held that the power to regulate commerce with Indian tribes involves the right to regulate commerce between tribes and among members thereof even when they are outside of their reservations and within the limits of a state.‡ In respect to police powers, the law is most definitely and clearly established that all police powers are retained by the states, except those especially delegated to Congress, those over the high seas, and territory and persons exclusively under Federal juris-

* In re Hoover, 30 Fed. Rep. 51; Lemon vs. Wagner, 68 Iowa, 660, 27, N. W. Rep. 814; Edgar vs. State, 45 Ark. 356; United States vs. Riley, 5 Blatch. 204.

† U. S. vs. Nelson, 29 Fed. Rep. 202; Nelson vs. U. S., 30 Fed. Rep. 112; Territory vs. O'Connor, 5 Dak. 397, 41 N. W. Rep. 746.

‡ U. S. vs. Shaw-Mux, 2 Sawy. 364.

diction. No powers were taken from the state by the Fourteenth amendment; neither were any liberties taken from the people.

The problems of dealing with the liquor traffic under the Interstate Commerce laws, based on the exclusive constitutional power given Congress over such traffic, have chiefly arisen from the great changes in conditions since 1787, when the Constitution was adopted. At that time the means of communication and transportation were of the most primitive character. Each manufacturer sold his own wares in his own immediate vicinity. The factory had not taken the place of the shop. Interstate commerce was but a mere incident in the life of the people. Under the Confederation, states had levied tariffs on imports from other states. Some of these tariffs were retaliatory imposts even when the same states were co-operating to shake off foreign oppression. The utmost fiscal and trade confusion resulted. It was to remedy this condition that interstate commerce was made wholly a matter of Congressional control. But along came the steam engine, the telegraph, the railway, the telephone, multiplying again and again the facilities of intercommunication and transport. In the wake of these inventions came the partnership, the factory, the associations, the corporations, trusts and cheap postage. Industry and commerce between the states grew by leaps and bounds until, instead of being an incident to traffic, this commerce reached Brobdingnagian proportions. Nearly all trade has become interstate. New York

buys her flour in Minnesota and Minnesota buys her clothes in New York. Texas sells her steers in Chicago and then sends there after her beefsteak. California ships her fruit to Chicago and buys her furniture in Michigan. Montana sends her hides to St. Louis and buys her shoes in the same market. Arkansas ships her apples to Boston and buys her quinine in Detroit. Utah sends her wool to Massachusetts and buys oysters in Baltimore with the proceeds. The factory is now built on a railway siding, from which its products are poured into these arteries of trade. Even the farmer ships his stock and products to the railway centers to be scattered thence to the four winds. There then arose the problem of making this old rule, constructed to fit primitive times, apply to modern conditions as they arose. The courts, however, have always strictly construed this clause of the Constitution as new problems were presented. It has always been ruled that Congress is supreme over interstate commerce, and Congress has always most jealously guarded its prerogatives in this respect. This little clause has been a tremendous force in building up the power of the central government over that of the states. In proportion as interstate commerce grew, just in that ratio did the central government develop. And as the power at Washington was magnified, so that of the states correspondingly diminished. Mayors of cities became of more importance than governors themselves. Traditions were brushed aside and theories demolished, in this

resistless sweep of progress. An Imperial Republic is born.

The complete authority of Congress over territory exclusively under its jurisdiction has been shown on these pages. There remain two topics relating to the power of Congress over the liquor traffic yet to be considered, both of which arise out of the clause of the Constitution conferring upon Congress power to regulate interstate commerce. One of these is the matter of adulteration. The other is the application of the Interstate Commerce law to interstate shipments of intoxicants into prohibition territory. It has long since been a settled principle of law that it is within the police powers of a state to enact legislation safeguarding the public health. The constitutional validity of laws prohibiting the adulteration of food and beverages has never been seriously disputed.* The state legislation on this subject has not been fully effective for the reason that it could not apply to interstate traffic. The fierce competition of the times had led to notorious adulteration of numerous items of food and drink of interstate traffic. After a long, tedious propaganda, led chiefly by Dr. H. W. Wiley, Chief of the Bureau of Chemistry of the Department of Agriculture, Congress passed† "an act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious

*Exp. Kohler, 74 Cal. 38, construing Act of March 7, 1887.

† Approved June 30, 1906. Public, No. 384

foods, drugs, medicines, and liquors, and for regulating the traffic therein." The principal opposition to this measure came from the rectifiers of distilled liquors. This act has already revolutionized the character of numerous items of food and drink. While some of the regulations drafted to carry this law into effect have been attacked, the constitutionality of the Act itself has not been seriously questioned. Congress remains the undisputed master of interstate traffic, in the matter of adulteration.

In the exercise of their police powers the states have enacted laws prohibiting, in whole or in part, the traffic in intoxicating liquors within their borders. In the enforcement of these laws, these states have come into constant collision with the provisions of the Federal constitution relating to the interstate commerce powers of Congress. Again and again have the states protested, but Congress has tenaciously refused to give up or appear to surrender any part of her authority over interstate traffic. Thus has been created a situation that has been a source of irritation for twenty years. And the increasingly drastic character of anti-liquor legislation in the states has served to increase in acuteness this unsatisfactory condition. The original rule,* determined in 1827, in respect to goods imported from foreign countries, was that any article of commerce authorized by Congress to be imported from a foreign country continued to be an article of foreign

* Brown vs. Maryland, 12 Wheat. 415, 449.

commerce until it reached the importer and while it remained in his hands in its unbroken condition. And, moreover, such importer could sell such article in the original package in which it was imported, without regard to state or local laws. The question subsequently arose as to the application of this principle to commerce between the states. To test the matter, three cases were selected for appeal by the liquor dealers. Rufus Choate and Daniel Webster were employed to prosecute the appeals with the view of extending the principle enunciated in 1827 to interstate commerce.* The efforts of the liquor men were defeated in this attempt, chiefly on the grounds that Congress had not exercised its powers by enacting legislation, whereas it had legislated in the matter of foreign commerce. In summing up the cases in his decision, Chief Justice Taney said:

"Upon the whole, the law of New Hampshire is in my judgment a valid one. For although the gin sold was an import from another state, and Congress has clearly the power to regulate such importations, under the grant of power to regulate commerce among the several states, yet, as Congress has made no regulation on this subject, the traffic in the article may be lawfully regulated by the state as soon as it is landed in its territory, and a tax imposed upon it, or a license required, or a sale altogether prohibited, according to the policy which the state may suppose to be its interest or duty to pursue."

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* The cases argued were Thurlow vs. Mass; Fletcher vs. R. I., and Pierce vs. N. H., the cause being generally known as "License Cases," 5 Howard, 504, 586.

During the next forty years it was the settled doctrine that intoxicating liquors imported from one state to another were subject to the laws of the state into which they were taken and could not be sold in such state, either in original packages or otherwise, except as the laws of such state might prescribe. It was held that even if the laws of any state did incidentally affect foreign or interstate commerce, such laws did not conflict with the Federal constitution unless they discriminated against foreign commerce. In 1888, signs of trouble came to the Prohibitionists as to interstate commerce. The state of Iowa had enacted a law forbidding any common carrier to bring intoxicating liquors within the state. A case* arising under this statute, known as Bowman vs. Railway, was carried to the United States Supreme Court, where it was declared unconstitutional as an attempt to regulate interstate commerce.† This emboldened the liquor dealers to further activities along the same line. Two years later they were rewarded in the famous Original Package decision‡ in which the former decision in the License cases of 1847 was directly overruled, and in which it was further decided that liquors imported from without a state could be

* Bowman vs. C. & N. W. R. R. Co., 125 U. S. 465, 8 Sup. Ct. Rep. 689.

† Chief Justice Waite and Justices Harlan and Gray dissented.

‡ Leisy vs. Hardin, 135 U. S. 100, reversing 78 Iowa 286.

sold by the importer in the original packages regardless of state law. This revolutionary decision led to the passage of the Wilson Act as detailed in Chapter VIII, making such shipments amenable to state law "upon arrival in such state or territory." This was construed to mean when the shipment had reached the hands of the consignee. Under this decision it is the practice of liquor dealers to make shipments of liquor into Prohibition territory, which shipments are under protection of the interstate commerce law until they reach the possession of the consignee. To remove this interference of the Federal government with the police powers of the state is one of the chief demands of the Prohibitionists.

As to the constitutional authority of a state to prohibit the beverage liquor traffic, as against any inherent or natural right of a citizen to sell, the United States Supreme Court has uniformly and firmly ruled with the state. The basis for the claim that it is the natural right of a man to engage in any sort of business has its origin in the Magna Charta of King John, which says "no free man shall be taken, or imprisoned, or disseised, or outlawed, or exiled, or in any ways destroyed, nor will we go upon him, nor will we send upon him unless by the lawful judgment of his peers or by the law of the land." In the reissue of the Charter by Henry III, these words were added after the word "disseised," "no free man shall be deprived of his liberties or of his free customs." Practically the same idea was expressed in Articles IV, V, VI, VII

of the original amendments to the Constitution of the United States. They were further elaborated and more explicitly stated in the Fourteenth amendment adopted after the Civil War. During the "eighties," when the states were engaged in so many contests looking to constitutional prohibition, these measures were savagely attacked in the courts by liquor dealers raising constitutional questions involving matters of "compensation," "impairment of contracts," and the inherent or natural right of any person to engage in any sort of business, regardless of its effect upon the community. The first of the important decisions involving inherent rights resulting from this contest was that in the case of Bartmeyer vs. Iowa,* in which the court flatly declared that "so far as such a right [to sell intoxicating liquors] exists, it is not one of the rights growing out of citizenship of the United States." Following this, another decision was rendered in a lottery case† in which similar principles were involved. The state of Mississippi had chartered a lottery in 1867. Two years later it had adopted a constitution prohibiting the same. It was under Section 10, Article 1, forbidding a state to pass laws impairing existing contracts, that the plaintiffs sought relief. Chief Justice Waite, in rendering the decision of the Court in the case, said:

"No legislature can bargain away the public health and the public morals. The people themselves cannot do it, much

* 18 Wallace, 129.

† Stone vs. Mississippi, 101 U. S. Rep., p. 815.

less their servants. The supervision of both these subjects of government power is continuing in their nature, and they are to be dealt with as the special exigencies of the moment may require. Government is organized with a view to their preservation, and cannot divest itself of the power to provide them. For this purpose the largest legislative discretion is allowed and the discretion cannot be parted with any more than power itself."

The next important decision grew out of an attack upon the law in the famous case known as Beer Company vs. Massachusetts, decided in 1877. The Boston Beer Company had been granted a perpetual charter in 1828. It was complained that the Prohibitory law of 1869 was invalid for the reason stated in the Stone vs. Mississippi case. Justice Bradley, in deciding the case, had said:* "If the public safety or the public morals require the discontinuance of the manufacturing or traffic, the hand of the legislature cannot be stayed from providing for its discontinuance, by the incidental inconvenience which individuals or corporations may suffer. All rights are held subject to the police power of the state." For the purpose of assailing the Bradley decision two typical cases were selected, Mulger vs. Kansas and Kansas vs. Ziebold. Both of these men were Kansas brewers whose business had been destroyed by the Prohibitory law. In

* 97 U. S. Rep., p. 32.

rendering the decision* of the court, December 5, 1887, Justice Harlan said:

"There is no justification for holding that the state, under the guise of merely police regulations, is here aiming to deprive the citizen of his constitutional rights; for we cannot shut our view to the fact, within the knowledge of all, that the public health, the public morals and the public safety may be endangered by the general use of intoxicating drinks; nor the fact, established by statistics accessible to every one, that the disorder, pauperism and crime prevalent in the country are in some degree at least traceable to this evil. * * * *

"The principle that no person shall be deprived of life, liberty or property without due process of law, was embodied, in substance, in the Constitution of nearly all, if not all, of the several states at the time of the adoption of the fourteenth amendment thereto, and it has never been regarded as incompatible with the principle, equally vital, because essential to the peace and safety of society, that all property in this country is held under the implied obligation that the owners' use of it shall not be injurious to the community. * *

"The power which the states unquestionably have of prohibiting such use by individuals of their property as shall be prejudicial to the health, the morals or the safety of the public is not, and—consistently with the existence and safety of organized society—cannot be burdened with the condition that the state must compensate such individual owners for pecuniary losses they sustain by reason of their not being permitted by a noxious use of their property to inflict injury up-

* 123 U. S. Rep. 623. See also, In re Raher, 140 U. S., 545; Cantini vs. Tillman, 54 Fed. Rep. 969; Munn vs. Illinois, 94 U. S., 113; Tanner vs. Alliance, 29 Fed. Rep. 196; Foster vs. Kansas, 112 U. S., 205; Eilenbecker vs. Plymouth County, 134 U. S., 31; Kansas vs. Bradley, 26 Fed. Rep. 289; In re Brosnahan, 18 Fed. Rep. 62.

on the community. The exercise of the police power by the destruction of property which is itself a public nuisance, or the prohibition of its use in a particular way, whereby its value becomes depreciated, is very different from taking property for public use, or of depriving a person of property without due process of law. In one case, a nuisance only is abated; in the other, an unoffending property is taken away from an innocent owner."

The scope of this decision was somewhat enlarged shortly after in the case of Kidd vs. Pearson, in which the principle was established that a state could suppress the beverage manufacture of liquor even when the liquor was being manufactured for sale in another state. This decision was quickly followed by the crowning deliverance of the series, that rendered in the case of Crowley vs. Christensen.* Justice Field, in rendering the decision of the Court, said:

"It is undoubtedly true that it is the right of every citizen of the United States to pursue any lawful trade or business, under such restrictions as are imposed upon all persons of the same age, sex and condition. But the possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace and good order and morals of the community. Even liberty, the greatest of all rights, is not unrestricted license to act according to one's own will. It is only freedom from restraint under conditions essential to the equal enjoyment of the same rights by others. It is then liberty regulated by law. The right to acquire, enjoy and dispose of property is declared in the Constitutions of several states to be one of the inalienable rights of man. But this declaration is not held to preclude the legislature of

* 137 U. S. Rep., 86.

any state from passing laws respecting the acquisition, enjoyment and disposition of property. What contracts respecting its acquisition and disposition shall be valid, and what void or voidable; when they shall be in writing, and when orally; and by what instruments they may be conveyed or mortgaged are subjects of constant legislation. And as to the enjoyment of property, the rule is general that it must be accompanied by such limitations as will not impair the equal enjoyment to others of their property. **Sic utere tuo ut alienum non laedas** is a maxim of universal application.

"For the pursuit of any lawful trade or business, the law imposes similar conditions. Regulations respecting them are almost infinite, varying with the nature of the business. Some occupations by their noise in their pursuit, some by the odors they engender, and some by the dangers accompanying them, require regulations as to the locality in which they shall be conducted. Some by the dangerous character of the articles used, manufactured or sold, require, also, special qualifications in the parties to use, manufacture or sell them. All this is but common knowledge, and would hardly be mentioned were it not for the position often taken and vehemently pressed, that there is something wrong in principle and objectionable in similar restrictions when applied to the selling by retail, in small quantities, of spirituous and intoxicating liquors. It is urged that, as the liquors are used as a beverage, and the injury following them, if taken in excess is voluntarily inflicted, and is confined to the party offending, their sale should be without restrictions, the contention being that what a man shall drink, equally with what he shall eat, is not properly matter for legislation.

"There is in this question an assumption of fact which does not exist, that when liquors are taken in excess the injuries are confined to the party offending. The injury, it is true, first falls upon him in his health, which the habit undermines; in his morals, which it weakens; and in the self-abasement which it creates. But, as it leads to neglect of business

and waste of property and general demoralization, it affects those who are immediately connected with and dependent upon him. By the general concurrence of every civilized and Christian community, there are few sources of crime and misery equal to the dram shop, where intoxicating liquors in small quantities, to be drunk at the time, are sold indiscriminately to all parties applying. The statistics of every state show a greater amount of crime and misery attributable to the use of ardent spirits obtained at these retail liquor saloons than any other source. The sale of such liquor in this way has therefore been, at all times, by the courts of every state, proper subject of legislative regulation. Not only may a license be exacted from the keeper of the saloon before a single glass of his liquor can be disposed of, but restrictions may be imposed as to the class of persons to whom they may be sold, and the hours of the day and the days of the week on which the saloons may be opened. The sale in that form may be absolutely prohibited. It is a question of public expediency and public morality, and not Federal law. The police power of the state is fully competent to regulate the business—to mitigate its evils or suppress it entirely. There is no inherent right in a citizen to thus sell intoxicating liquor by retail; it is not a privilege of a citizen of a state or a citizen of the United States. As it is a business attended with great danger to the community, it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils."

In this series of decisions, the liquor dealers met defeats of the most vital and overwhelming character. They won some comfort under the interstate commerce decisions, enabling them to ship liquors to a consignee in a prohibition state, which right will doubtless be taken from them by early Congressional action. But they had irrevocably lost all of their main contentions

as to the impairment of contracts, as to taking property without compensation, as to police powers of the state, as to the Fourteenth Amendment and as to the inherent or natural rights of men. With the modification of the Interstate Commerce law by Congress, so as to prevent Federal interference with the states in dealing with this subject, the way will be fully open to the states more successfully to stay the hands of the wicked, designing men who would make their business that of oppressing, debauching and maltreating the weak. A nation does not consist of mountains and hills and valleys and mines and lakes and rivers; it is the character of the people that makes the glory of a Republic or Empire. If there is any reason for preventing ghouls from scuttling the nation's ships of war, or poisoning the public water supply, the same reasons with the same force counsel the restraining of treasonable men from rotting its citizenship by traffic in debauchery. The United States Supreme Court has armed the states to finish the work thus well begun. Let them complete the task.

Customs Revenue.

CHAPTER II.

From the beginning of the government up to the year 1816, while the customs revenue was partly influenced by foreign considerations, it was largely a matter of fiscal concern. Since that period foreign interests have disappeared, while fiscal and political requirements have forged to the front. The debate, since that time, has chiefly revolved around proposals for "protection," "free trade" and "tariff for revenue only." The right to import, in earlier times, was usually associated with the right to sell. The right to import seemed to imply the right to sell. This theory, however, was sentenced to death by the United States Supreme Court in 1847, after one of the greatest legal battles of the century. The litigation grew out of the aggressive policy adopted in the early forties by the various states, of enacting drastic licensing and local option laws. In order to contest this legislation, the liquor dealers banded themselves together and employed Rufus Choate and Daniel Webster, the two leading constitutional lawyers of the period, to defend their interests. Three test cases, wherein the defendants in the Court below had been convicted of violating the state

laws restricting or forbidding the selling of liquor, were appealed to the United States Supreme Court.* The first argument was held in 1845, but no decision was reached.

In 1847, the subject was reargued before seven of the nine justices. In his argument, Mr. Webster presented the general proposition that the "right to import implied the right to sell." Mr. Choate† confined his argument to the contention that the legislation

* These cases were Thurlow vs. Massachusetts, Fletcher vs. Rhode Island, and Pierce vs. New Hampshire.

† In this litigation, Choate and Webster appeared simply as attorneys, and not to express their own personal views. Webster, at least, was noted for his drinking habits, yet both were friends of the temperance movement. In the winter of 1846, Mr. Choate delivered a dramatic address in the Massachusetts Senate in behalf of measures to restrict the liquor traffic. In his impassioned manner, he said (Journal of the American Temperance Union, June, 1846, p. 84):

"The argument is that they live in a free country. 'Your temperance fanatics shall never set their foot upon our necks. It is like going into Indian captivity — or like the middle passage in a Portuguese slaver.' And so, Sir, I suppose the crew of the Kent Indianman thought. 'We live in a free country and if we can't carry a little cask of spirit to sea with us, let the ship and passengers all go to the bottom together.' And so the little cask of rum was taken, and from that cask a fire was kindled, which burned that noble ship of 1,100 tons, and eighty human beings were sent down into a coffinless grave, and nothing but the providence of God interfered to save five hundred others. Who is not satisfied that the law of force, if gentlemen please to call it so, ought to have been applied when moral suasion failed? I would leave this abstract question with a jury of drinking men; I know they would decide it right. Sir,—we apply the law of force in every case when a mighty evil is in progress. We should break into any man's house, at the cry of murder, though it is his

under discussion interfered with the existing commercial treaties with France. The contention of the liquor dealers was not sustained. The principle was thus established that the states had a right to regulate or prohibit the traffic in intoxicating liquors. In this decision the foundation was laid for future prohibitory legislation, and a starting point established for sub-

castle—you would knock any man down if you saw him killing his wife and child. You would not coolly stand by and see a man cut his own throat—you would interfere, because in all of these cases you would know certainly there must be something like begun or confirmed insanity. Sir, I insist that we need a law that prohibits men from drinking rum. Let me refer you here to facts. Mr. Senator Grundy, after thirty years' extensive practice in the law, gives it as his opinion that the use of ardent spirit has occasioned nine-tenths of all pauperism, and three-quarters of all the crimes in our country. And from the statistical tables, I learn that ninety-nine in a hundred, of all who commit suicide in the world, are the immediate or remote victims of intemperance; seven-tenths of all who have died of cholera, both in this country, and in Europe, were spirit drinkers, and one-half were decidedly intemperate.

"In a single year 40,000 persons in our own country go down to a drunkard's grave.

"Away with the idea that moral suasion would prevent all this. How much moral suasion do you believe would have been necessary to have prevailed with the lamented physician of a town near by, whose appetite for spirit was so strong, that when he saw rum for sale, in defiance of the temperance law, upon the observance of which law he hung all his hopes, he exclaimed, 'My God, there is no help for me!' and taking his pistol, blew his brains out in his study. How much moral suasion do you believe would have been necessary to have prevailed with that liquor seller, who, when urged by the physician referred to, never to sell him any more, replied, 'Damn you, I will sell to who I have a mind to, and as much as I have a mind to!'"

On January 13, 1832, then in the zenith of his glory,

sequent United States Supreme Court decisions on the subject of the prohibition of the liquor traffic.

In rendering the decision of the Court, Chief Justice Taney said:

"Every state, therefore, may regulate its own internal traffic, according to its own judgment, and upon its own views of the interest and well-being of its citizens. I am not aware that these principles have ever been questioned. . . Although a state is bound to receive and permit the sale by the importer of any article of merchandise which Congress authorizes to be imported, it is not to furnish a market for it, nor to abstain from the passage of any law which it may deem necessary or advisable to guard the health and morals

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Daniel Webster attended a meeting of the Congressional Temperance Society in Washington. Lewis Cass presided. Speeches were made by Senator Felix Grundy, Senator Theodore Frelinghuysen, Senator Isaac C. Bates and President John Quincy Adams. Mr. Webster said:

"One main benefit, perhaps the principal one, which may be expected from this meeting, is the united expression of opinion, by gentlemen from all parts of the country, of the effect which has been produced by the Societies for the promotion of Temperance. I rise, therefore, Sir, not for the purpose of making an argument, but of expressing clearly and strongly my own opinion on this point.

"I shall not follow those who have already spoken, by remarking at any length, on the general subject of intemperance, as a personal, domestic, social and political evil. Nothing less, certainly, can be said of it, than that it is a great vice; and, in an extraordinary degree, the parent and concomitant of other great vices. In taking the mensuration of the mischiefs which it brings to men, it seems to me that we ought to regard, after all, not so much its consequences to their comforts, their reasonable enjoyment, their health, or their life, as its effects on their moral and intellectual character; because all vice is essentially dreadful as it affects the character and morals of an immortal being, and this sinks

of its citizens, although such law may discourage importation, or diminish the profits of the importer or lessen the revenue to the general government.

"If any state deems the retail and internal traffic in ardent spirits injurious to its citizens, and calculated to produce idleness, vice and debauchery, I see nothing in the Constitution of the United States to prevent it from regulating and restraining the traffic, or from prohibiting it altogether, if it thinks proper."

Six of the seven justices wrote opinions concurring, and the seventh, Justice Nelson, concurred without comment. Said Justice Grier:

"It is not necessary for the purpose of justifying the state legislation now under consideration, to array the appalling statistics of misery, pauperism and crime which have their origin in the use or abuse of ardent spirits. The police power,

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its victim in the sight of God and man below the grade of moral, to that of brutal beings. Doubtless more than other vices, this unfits the mind for the cultivation or growth of any plant of virtue. It strikes a blow, a deadly blow, at once, on all its capacities, and all its sensibilities. It renders it alike incapable of pious feelings, of social regard, and of domestic affections. One of its earliest visible consequences, is lessening of self-respect, a consciousness of personal degradation, a humbling conviction, felt by its victim, that he has sunk, or is sinking, from his proper rank, as an intellectual and moral being. The mind becomes at last reconciled to its own degradation and prostration; and the influence of just motives is no longer felt by him. Every high principle, every noble purpose, every pure affection, becomes extinguished, in the insane surrender of reason and character to low appetite. Just so far as human virtues have to do with the mind, and the heart of man, just so far intemperance, by hardening the one, and blinding the other, shows itself a foe to them all. Habitual intemperance is, indeed, a deliberate and contemptuous rejection of that gift of REASON, with which the Creator has endowed man; a voluntary and mad surrender of human rank, and eager plunging from human intellect, human

which is exclusively in the states, is alone competent to the correction of these great evils, and all measures of restraint or prohibition necessary to effect the purpose are within the scope of that authority. There is no conflict of power, or of legislation as between the states and the United States, each acting within its sphere, and for the public good; and if loss of revenue should accrue to the United States from a diminished consumption of ardent spirits, she will be a gainer a thousand fold in the health and happiness of the people."

Justice Woodbury said:

"The power to forbid things is surely as extensive, and rests upon as broad principles of public security and sound morals, as that to exclude persons. And yet who does not know that slaves have been prohibited admittance by many of our states, whether coming from our neighbors or abroad. And which of them cannot forbid their soil from being polluted by incendiaries and felons from any quarter?"

The customs tariff system grew out of the finan-

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happiness and human hopes, to an equality with the lower orders of created things.

"But I shall not detain the meeting further with these general remarks. I came to it, not as the advocate of any particular society or form of pledge, but for the single object of giving my own testimony, founded on my own observation, to the beneficial effects of these societies. I now propose to express that opinion, in the form of a resolution, in which I hope for the concurrence of the meeting:

"Resolved, That the efforts of the Temperance Societies in the United States and those who have co-operated with them, have had the manifest effect of diminishing crime; of lessening the number of cases of imprisonment for small debts; of benefitting the condition of numerous classes of people, by improving their health, and increasing, not only their industry and means of living, but also their self-respect and love of character; of giving new impulse to the domestic virtues belonging to husbands, fathers and children; of awakening fresh attention to the subject of education, and the moral instruction of the young; and of advancing, by visible and large degrees, the general cause of religion and morality in the community."

cial entanglements in which the Colonies became involved toward the close of the Revolutionary War. In 1783 the United States found itself owing about $42,000,000, about $8,000,000 of which arose from loans obtained in France and Holland. Congress was practically without resources, as it had no authority to enact a customs tariff without the consent of each of the thirteen states. This authority the states were loath to give, as each depended largely upon a customs tariff for its own support. On February 12 of that year Congress declared that "the establishment of permanent and adequate funds on taxes or duties, which shall operate generally, and on the whole, in just proportion, throughout the United States, is indispensably necessary toward doing complete justice to the public creditors, for restoring public credit, and for providing for the future exigencies of the War.* But it was much easier to pass resolutions than to carry them out. Two months later, Congress definitely recommended to the states as "being absolutely necessary, to the restoration of public credit, and to the punctual discharge of public debts" to vest Congress with power to levy certain specified duties on spirits, wines, teas, pepper, sugar, cocoa and coffee and an ad valorem duty of five per cent on all other imported goods. To urge the states to adopt this recommendation, a committee composed of Alexander

* Pitkin, in his Civil and Political History of the United States, Vol. II, gives an excellent resume of the troubles of this period.

Hamilton, James Madison and Oliver Ellsworth was appointed to draft an address and appeal to the states urging their endorsement. This was followed by an urgent address advocating the measure prepared by General Washington himself, written on June 8, in which he said that "no real friend to the honor and independency of America can hesitate a single moment respecting the propriety of complying with the just and reasonable measure proposed."

In spite of all this pressure, it was found impossible for the states to agree upon all the features of the proposal. The interest on the foreign loans was being paid out of the loans themselves. The domestic debts were wholly unprovided for and depreciated in value to ten cents on the dollar. This gloomy situation provoked the agitation which led to the adoption of the Constitution in 1789. This discussion for the constitution, led by a coterie of writers, chiefly Alexander Hamilton, James Madison, and John Jay, was conducted by means of a series of essays first published in the newspapers, addressed "To the People of New York," and finally in pamphlet and book form under the title, "The Federalist."* In these essays, the pressing need of a customs duty for Federal purposes was kept well to the front, particularly a duty on ardent spirits, with occasional references to the good effect that such a law would

* This collection of essays, with frequent revisions, passed through twenty-four known editions, the last being published by J. B. Lippincott & Co. in 1864.

have in reducing the consumption of liquor. In one of these letters,* Mr. Hamilton declared:

"The single article of ardent spirits, under Federal regulation, might be made to furnish a considerable revenue. Upon a ratio to the importation into this state (New York), the whole quantity imported into the United States, which at a shilling a gallon, would produce two hundred thousand pounds. That article would well bear this duty; and it would tend to diminish the consumption of it. Such an effect would be equally favorable to agriculture, to the economy, to the morals, and to the health of the society. There is, perhaps, nothing so much the subject of national extravagance as these spirits."

Inasmuch as it was the clamor for a uniform customs duty and an adequate financial plan that led the way to the adoption of the constitution, the proposed customs duty was the first thing considered. Immediately after the oath of office had been administered to the members of the House of Representatives on April 8, 1789,† James Madison offered a resolution declaring for a duty on rum, other spirituous liquors, wines, molasses, tea, pepper, sugar, cocoa, and coffee and an ad valorem duty on other imports.

In the debates which followed, the hope was frequently expressed that the law would have the effect

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* Letter to **The New York Packet**, Nov. 27, 1787.

† Congress was called to meet on March 4, but a quorum was not obtained until April 1, and the first week was used up in effecting an organization, adopting rules, etc. The record of the discussions relating to the adoption of this first customs tariff may be found in Gales' Debates in Congress, Vol. I, pp. 107 **et seq.**

of reducing the consumption of spirits and encouraging the consumption of beer as a substitute, the latter being a milder beverage. Mr. Madison, the author of the resolution, voiced the general sentiment in saying, "I would tax this article [spirits] with as high a duty as can be collected, and I am sure if we judge from what we have heard and seen in the several parts of the Union, that it is the sense of the people of America that this article should have a duty imposed upon it weighty indeed."*

Thomas Fitzsimmons, member from Pennsylvania, observed:†

"It will be readily granted me, that there is no object from which we can collect revenue, more proper to be subjected to a high duty, than ardent spirits of every kind; if we could lay the duty so high as to lessen the consumption in any great degree, the better. As the gentleman has just observed, it is not an article of necessity, but of luxury, and a luxury of the most pernicious kind. It may be observed, that lessening the consumption is not the object which the committee has in view; but surely, from the considerations I have mentioned, it is an article for us to draw all possible revenue from."

"I wish to lay as large a sum on this article as good policy may deem expedient; it is an article of great consumption, and though it cannot be reckoned a necessity of life, yet it is in such general use that it may be expected to pay a very considerable sum into your treasury, when others may not with so much

* Debates in Congress, Vol. I, p. 129.

† Ibid.

certainty be relied upon," urged John Lawrence, of New York.

Fisher Ames, of Massachusetts, opposed a very heavy tax on rum because it would inflict upon navigation and fishery a "deadly wound." "If the manufacturers of the country's rum are to be devoted to certain ruin, to mend the morals of others, let them be admonished that they prepare themselves for the event; but in the way we are about to take, destruction comes on a sudden, they have not time to seek refuge in any other employment whatsoever," he declared. Still Mr. Ames had no good word in defense of the use of spirits. On the contrary, he said:

"I would concur in any measure calculated to exterminate the poison covered under the form of ardent spirits, from our country; but it should be without violence. I approve as much as any gentleman the introduction of malt liquors, believing them not so pernicious as the one in common use; but before we restrain ourselves to the use of them, we ought to be certain that we have malt and hops, as well as brew-houses for the manufacture."*

Later in the debate, April 28, Mr. Ames further emphasized his position, saying:

"The custom and fashion of the times countenance the consumption of West India rum. I consider it good policy to avail ourselves of this means to procure a revenue; but I treat as idle the visionary notion of reforming the morals of the people by a duty on molasses. We are not to consider ourselves, while here, as at church or school, to listen to the harangues of speculative piety; we are to talk of the political interests committed to our charge. When we take up the sub-

* Id. p. 139.

ject of morality, let our system look toward that object and not confound itself with revenue and protection of manufactures."*

Elbridge Gerry, also from Massachusetts, savagely attacked the proposals to tax the importation of molasses from which his constituents distilled their rum. "If we do not import molasses," he declared, "we cannot carry on our distilleries nor vend our fish." He urged that taxing molasses would operate "to encourage the importation of rum from the West Indies, and destroy our own distilleries." Like Mr. Ames, he had no good words for the use of ardent spirits as a beverage. He said:

"It has been frequently observed, that rum is injurious to the morals of the people; if I could have my wish, it would not be to diminish, but to annihilate the use of it, both foreign and domestic, within the United States."†

The bill was duly passed and approved by President Washington, July 4, 1789, being the second act to be placed upon the statute book of the United States under the Constitution. It provided the following duty upon imported liquors and malt:

Ale, Porter and Beer: In bottles, per dozen, 20 cents; Otherwise per gallon, 5 cents.

Spirits: Jamaica proof, per gallon, 10 cents; All other, per gallon, 8 cents.

Wines: Madeira, per gallon, 18 cents; all others (bottles or cases), 10 cents; All others (otherwise), per gallon, 10 cents.

Malt: per bushel, ten cents.

* Id. p. 232.

† Ibid. p. 223

Up to 1816, party lines were not closely drawn in tariff discussions. But in that year, James Monroe became President on a low tariff proposal, and, from that time, the Federalist party, with its successors, the Whig and Republican parties, have generally espoused the protective tariff idea, while the opposition has usually championed low tariff or "tariff for revenue only" ideas.

Since 1816 the liquor question has been almost wholly lost sight of in tariff debates, and public policy has alternated between the contending theories. The protectionists came into power with a high tariff in 1824, which was raised still higher in 1828. The low tariff Democrats, under the leadership of John C. Calhoun, savagely attacked this law, and the "Compromise Tariff" of 1833 resulted. The panic of 1837 occurred, and of course was attributed to the Act of 1833. This resulted in a Whig victory and another protective tariff in 1842. The new tariff did not seem to operate satisfactorily, and the "Free Trade Tariff" of 1846 followed. Two years later gold was discovered in California. Then France and England grappled Russia by the throat on the shore of the Black Sea, which again complicated the world's finances. The panic of 1857 followed the peace of 1856. This panic naturally caused another downfall of "free trade," and the election of Abraham Lincoln, which was followed by the enactment of the "Morrill Tariff Act." Since then have come "Horizontal Bill" Morrison, John Sherman, William McKinley with

ultra protection ideas, James G. Blaine with his reciprocity schemes, and Nelson Dingley with his bill which so much resembled the one enacted by the Cleveland Democrats that they could scarcely be distinguished; all these have crossed the tempestuous arena of tariff discussion. In all of these proposals, the liquor traffic has been universally recognized as a fit subject for high tariff duties. Even the champions of low tariff were generally willing to permit as heavy a duty on liquors as possible without scandalizing their political creed.

The extent to which the Government depends on the customs revenue from the liquor traffic to maintain its finances is grossly exaggerated in the popular mind. The accompanying table shows the total customs revenue of the United States since the year 1866, and the amount each year which accrued out of the customs duties on imported liquors. It appears that the average total annual customs receipts per capita for this period amount to $3.14, while the annual per capita receipts from the customs duty on liquors for the same period amount to but fourteen cents.

TOTAL CUSTOMS RECEIPTS AND CUSTOMS FROM LIQUORS OF THE UNITED STATES.

Fiscal Year.	Total Customs Receipts.		Customs Receipts from Liquors	
	Receipts.	Per Capita.	Receipts.	Per Capita.
1867	$176,417,811	4.65	$ 7,211,242	.19
1868	164,464,600	4.34	6,548,042	.17
1869	180,048,427	4.68	7,459,087	.19
1870	194,538,374	4.96	8,338,871	.21
1871	206,270,408	5.12	8,666,400	.21
1872	216,370,287	5.23	9,225,323	.24
1873	188,089,523	4.44	9,380,773	.22
1874	163,103,834	3.75	8,550,113	.21
1875	157,167,722	3.51	7,509,462	.21
1876	148,071,985	3.22	6,487,770	.16
1877	130,956,493	2.77	5,956,023	.12
1878	130,170,680	2.67	5,286,112	.11
1879	137,250,048	2.73	5,462,951	.11
1880	186,522,065	3.64	6,297,077	.09
1881	198,159,676	3.78	6,812,827	.12
1882	220,410,730	4.12	7,183,653	.13
1883	214,706,497	3.92	9,253,341	.14
1884	195,067,490	3.47	6,263,887	.12
1885	181,471,939	3.17	7,156,564	.12
1886	192,905,023	3.30	7,194,147	.15
1887	217,286,893	3.65	7,402,243	.12
1888	219,091,174	3.60	7,663,244	.12
1889	223,832,742	3.60	7,786,400	.12
1890	229,668,585	3.62	8,518,081	.13
1891	219,522,205	3.40	9,421,258	.15
1892	177,452,964	2.68	8,840,501	.13
1893	203,355,017	3.00	9,256,617	.13
1894	131,818,531	1.92	6,930,244	.10
1895	152,158,617	2.17	6,929,704	.10
1896	160,021,752	2.23	6,736,063	.10
1897	176,554,127	2.41	8,005,277	.11
1898	149,575,062	1.99	5,742,240	.08
1899	206,128,482	2.72	7,116,166	.10
1900	233,164,471	3.01	8,427,410	.11
1901	238,585,456	3.01	9,121,236	.12
1902	254,444,708	3.18	10,148,514	.12
1903	284,479,582	3.49	11,210,498	.14
1904	261,274,565	3.16	11,647,375	.14
1905	261,798,857	3.11	12,097,799	.15
1906	300,251,878	3.49	13,528,213	.15
1907	332,233,363	3.84	15,797,814	.18
1908	286,113,130	3.24	14,696,334	.16
1909	**300,711,934**	3.33	15,650,113	.17
1910	333,683,445	3.69	17,572,334	.19

From the above table it appears that the amount of revenue derived from the importation of liquors is

trivial, indeed, as compared with the total receipts from the customs. Should the importation of liquors be entirely discontinued, there would be little appreciable effect, so far as the income from the same is concerned, the amount involved being only fifteen or sixteen cents per capita, annually.

The rate of customs duty has increased enormously from the beginning, the present rate on distilled spirits being about thirty times the rate provided in the Revenue Act of 1789. In the same period the customs revenue derived from liquors has grown to about thirty-five times the amount collected thereon the first year. In the same period, the population of the nation has increased to only about twenty times that of 1790. This means that the imports of intoxicating liquors have more than kept pace with the development of the country, in spite of the enormous duties exacted from it.

It further appears that the levying of an internal revenue tax has had little or no effect upon the imports of strong drink. During the period from 1789 up to the Civil War, two internal revenue systems were established and abandoned. During the life of each system the importation of these same liquors thrived as though no such burden had been placed on the internal traffic. The accompanying table shows the total duty collected on imported liquors, and the average rate of duty thereon for each year from 1789 to 1827. The years in which an excise was levied are marked with a star:

CUSTOMS DUTY ON DISTILLED SPIRITS.[a]

Year.	Average Per Cent of Duty	Duty	Year.	Average Per Cent of Duty.	Duty
1790	8.4	$ 346,234	1809	28.6	$1,327,059
1791	13.6	492,122	1810	28.3	1,272,063
1792*	21.4	979,547	1811	27.6	950,604
1793*	29.0	995,266	1812	37.0	1,520,482
1794*	29.0	1,580,247	1813	60.1	611,914
1795*	28.5	1,433,276	1814*	57.3	327,780
1796*	28.6	1,605,882	1815*	58.4	3,281,799
1797*	27.6	1,881,330	1816*	47.3	2,340,014
1798*	29.1	1,354,271	1817*	43.8	1,775,548
1799*	28.1	2,053,758	1818	43.7	2,646,187
1800*	29.9	1,434,276	1819	43.8	1,959,125
1801*	29.2	2,221,064	1820	44.0	1,728,566
1802	29.2	2,258,496	1821	43.7	1,679,319
1803	29.0	2,594,259	1822	40.5	2,040,413
1804	29.2	3,061,207	1823	44.7	1,655,326
1805	29.2	2,232,902	1824	44.4	2,348,075
1806	29.3	3,074,398	1825	48.8	1,802,766
1807	29.4	2,656,047	1826	43.6	1,532,268
1808	28.8	1,333,474			

a. State Papers, 20th Congress, 1st Session, Doc. No. 168.
* Excise years.

The above record irresistibly leads to the conclusion that the levying of these two excise systems upon the traffic in intoxicating liquors had no appreciable effect upon the importation of the same. It may have held in check somewhat the importation, and thus stimulated the internal traffic. In theory, this is usually held to be the result of such a course, but it is impossible to verify this theory from the statistical record of the period under observation. Whatever the result ought to have been from the reasoning of the economist, the facts remain that during the periods in which the war excise on liquors was collected under the Acts of 1794 and 1813, the rate of customs duty on liquors was not materially changed, and in each case the importations continued to grow at substantially the same rate as during the few years prior to each

excise tariff and also during the few years subsequent thereto. According to rules of the economist, the statistics should have shown that the importation of these liquors suffered during the excise periods, but it did not. It is only another item of evidence, that has been duplicated so repeatedly since that it has become almost an axiom, that a burden of taxation levied upon vice does not have the same effect as when a similar burden is levied upon a legitimate article of commerce. In our record of a century and a quarter as a nation, it would be a most difficult matter to point to any burden of taxation of any kind, impost, excise or state or local license that affected, in any considerable degree, the consumption of intoxicating drinks. The restriction of hours of sale, accompanying high license measures, has undoubtedly influenced the consumption of these intoxicants, but it has never been shown that taxation itself of any variety has had such result in any marked degree.

From the establishment of the Constitution in 1789, there have been passed 141 different Tariff Acts, besides numerous joint resolutions and proclamations relating to reciprocity and treaty arrangements. The specific duties on liquor have changed from time to time, and sometimes an ad valorem duty was collected, in addition to the specific charges. The following tabulation gives all the specific charges on liquor imports under each of these various acts. In a few cases, where there was no specific duty charged, the ad valorem duty is indicated in its place:

TABLE SHOWING THE RATE OF DUTY ON LIQUORS COLLECTED UNDER EACH TARIFF ACT OF THE UNITED STATES.

Tariff Act		Alcohol	Ale Porter, and Beer		Cordials, Liquors and Absinthe	Malt	Spirituous Liquors	Wines	
Year	Date	Proof per Gal.	Per Gal.	Per Dozen Bottles		Per Bushel	Per Gallon	Per Gallon	Per Dozen Bottles
1789	July 4		.05c	.20c		.10c	.08 to .10c	.10 to .18c	
1790	Aug. 10		05	.20		.10	.12 to .25	.20 to .30	
1790	Dec. 27		.05	.20		.10	.12 to .25	.20 to .30	
1791	March 3		.05	.20		.10	20 to .40	.20 to .30	
1792	May 2		.08	.20		.10	25 to .50	.20 to .56	
1793	Feb. 27		.08	.20		.10	25 to .50	.20 to .56	
1794	June 5		.08	.20		.10	.25 to .50	.20 to .56	
1794	June 5		.08	.20		.10	.25 to .50	.20 to .56	
1794	June 7		.08	.20		.10	.25 to .50	.20 to .56	
1795	Jan. 29		.08	.20		10	.25 to .50	.20 to .56	
1797	March 3		.08	.20		.10	.25 to .50	.20 to .56	
1797	March 3		08	.20		10	.25 to .50	.20 to .56	
1797	July 8		.08	.20		.10	25 to .50	.20 to .56	
1798	April 7		.08	.20		.10	.25 to .50	.20 to .56	
1800	May 7		08	.20		.10	.25 to .50	.20 to .56	
1800	May 13		.08	.20		.10	.25 to .50	.28 to .58	
1802	May 1		08	.20		.10	.25 to .50	.28 to .58	
1804	Feb. 24		.08	.20		.10	.25 to .50	.28 to .58	
1804	March26		.08	.20		.10	.25 to .50	.28 to .58	
1804	March27		.08	.20		.10	.25 to .50	.28 to .58	
1805	March 3		.08	.20		.10	.25 to .50	.28 to .58	
1806	April 21		.08	.20		.10	.25 to .50	.28 to .58	
1807	March 3		.08	.20		.10	.25 to .50	.28 to .58	
1808	Jan. 19		.08	.20		.10	.25 to .50	.28 to .58	
1808	March 4		.08	.20		.10	.25 to .50	.28 to .58	
1809	Jan. 10		.08	.20		.10	.25 to .50	.28 to .58	
1810	Jan. 12		.08	.20		.10	.25 to .50	.28 to .58	
1812	Jan. 31		.08	.20		.10	.25 to .50	.28 to .58	
1812	July 1		16	.40		.20	.50 to $1	46 to $1.16	80%
1813	Feb. 25		16	.40		.20	.50 to $1	46 to $1.16	80%

1813	Feb. 12	.16	.40	.20	.50 to $1	.46 to $1.16			80%
1813	July 29	.16	.40	.20	.50 to $1	.46 to $1.16			80%
1815	March 3	.16	.40	.20	.50 to $1	.40 to $1.16			80%
1816	Feb. 5	.16	.40	.20	.50 to $1	.40 to $1.16			80%
1816	March 1	.16	.40	.20	.50 to $1	.40 to $1.16			80%
1816	April 27	.10	.15	15%	.38 to .75	.15 to $1			25c
1817	Jan. 14	.10	.15	15%	.38 to .75	.15 to $1			25
1817	March 3	.10	.15	15%	.38 to .75	.15 to $1			25
1818	April 20	.10	.15	15%	.38 to .75	.15 to $1			25
1818	April 20	.10	.15	15%	.38 to .75	.15 to $1			25
1818	April 20	.10	.15	15%	.38 to .75	.15 to $1			25
1819	March 3	.10	.15	15%	.38 to .75	.15 to $1			25
1820	April 18	.10	.15	15%	.38 to .75	.15 to $1			25
1820	May 15	.10	.15	15%	.38 to .75	.15 to $1			25
1822	May 6	.10	.15	15%	.38 to .75	.15 to $1			25
1823	March 3	.10	.15	15%	.38 to .75	.15 to $1			25
1824	Jan. 7	.10	.15	15%	.38 to .75	.15 to $1			25
1824	May 22	.15	.20	12½%	.38 to .75	.15 to $1			25
1825	Feb. 11	.15	.20	12½%	.38 to .75	.15 to $1			25
1826	April 20	.15	.20	12½%	.38 to .75	.15 to $1			25
1828	May 9	.15	.20	12½%	.38 to .75	.15 to $1			25
1828	May 19	.15	.20	12½%	.53 to .90	.15 to $1			25
1828	May 24	.15	.20	12½%	.53 to .90	.15 to $1			25
1828	May 24	.15	.20	12½%	.53 to .90	.10 to .50			
1830	May 20	.15	.20	12½%	.53 to .90	.10 to .50			
1830	May 29	.15	.20	12½%	.53 to .90	.10 to .50			
1830	May 29	.15	.20	12½%	.53 to .90	.10 to .50			
1832	July 14	.15	.20	12½%	.53 to .90	.03 to .50			
1832	July 14	.15	.20	12½%	.53 to .90	.03 to .50			
1833	March 2	.15	.20	12½%	.53 to .90	.03 to .50			
1833	March 2	.15	.20	12½%	.53 to .90	.03 to .50			
1834	June 30	.15	.20	12½%	.53 to .90	.03 to .50			
1834	June 30	.15	.20	12½%	.53 to .90	.03 to .50			
1835	March 3	.15	.20	12½%	.53 to .90	.03 to .50			
1836	July 1	.15	.20	12½%	.53 to .90	.03 to .50			
1836	July 4	.16	.20	12½%	.53 to .90	.03 to .25			
1838	May 31	.16	.20	12½%	.53 to .90	.03 to .25			
1838	July 7	.15	.20	12½%	.53 to .90	.03 to .25			

Tariff Act		Alcohol	Ale, Porter and Beer		Cordials, Liquors and Absinthe	Malt	Spiritous Liquors	Wines	
Year	Date	Proof per Gal.	Per Gal.	Per Dozen Bottles		Per Bushel	Per Gallon	Per Gallon	Per Dozen Bottles
1839	March 3		.15	.20		12½%	.53 to .90	.03 to .25	
1841	Sept. 11		.15	.20		20%	.53 to .90	.03 to .25	
1842	Aug. 30		.15	.20	.60c	20%	.60 to $1	.06 to .60	
1845	Feb. 26		.15	.20	.60	20%	.60 to $1	.06 to .60	
1845	March 3		15	.20	.60	20%	60 to $1	.06 to .60	
1846	July 30		30%	30%	100%	20%	30% to 100%	40%	
1846	Aug. 3		30%	30%	100%	20%	30% to 100%	40%	
1846	Aug. 6		30%	30%	100%	20%	30% to 100%	40%	
1848	March29		30%	30%	100%	20%	30% to 100%	40%	
1854	Aug. 5		30%	30%	100%	20%	30% to 100%	40%	
1855	March 2		30%	30%	100%	20%	30% to 100%	40%	
1855	March16		30%	30%	100%	20%	30% to 100%	40%	
1857	March 3		30%	30%	100%	20%	30% to 100%	40%	
1857	March 3		24%	24%	30%	15%	24% to 30%	30%	
1858	Feb. 25		24%	24%	30%	15%	24% to 30%	30%	
1861	March 2		.15	.25	* 50	20%	* 40 to $1	40%	
1861	July 25		15	.25	* 50	20%	* 40 to $1	40%	
1861	Aug. 5		15	.25	* 50	20%	* 40 to $1	40%	
1861	Dec. 24		15	.25	* 50	20%	* 40 to $1	40%	
1862	Jan. 11		15	.25	* 50	20%	* 40 to $1	40%	
1862	April 5		.15	.25	* 50	20%	* 40 to $1	40%	
1862	July 14		20	.30	* 75	20%	* 50 to $1.50	50%	
1863	March 3		20	.30	* 75	20%	* 50 to $1.50	50%	
1863	March 3		20	.30	* 75	20%	* 50 to $1.50	50%	
1864	Jan. 28		20	.30	* 75	20%	* 50 to $1.50	50%	
1864	June 30	$2	20	.35	*$2 to $2.50	20%	*$2 to $3	a 50 to $1	$3 to $6
1865	Feb. 28	$2	20	.35	*$2 to $2.50	20%	*$2 to $3	a 50 to $1	$3 to $6
1865	March 3	$2	20	.35	*$2 to $2.50	20%	*$2 to $3	a 50 to $1	$3 to $6
1866	Mar. 16	$2	20	.35	*$2 to $2.50	20%	*$2 to $3	a 50 to $1	$3 to $6
1866	May 16	$2	20	.35	*$2 to $2.50	20%	*$2 to $3	a 50 to $1	$3 to $6
1866	June 1	$2	20	.35	*$2 to $2.50	20%	*$2 to $3	a 50 to $1	$3 to $6

* Proof gallon. a Plus 25 per cent.

1866	July 29	$2	.20	.35	*$2.50	20%	*$2.50	a.50 to $1	$3 to $6
1867	March 2	$2	.20	.35	*$2.50	20%	*$2.50	a.50 to $1	$3 to $6
1868	Feb. 3	$2	.20	.35	*$2.50	20%	*$2.50	a.50 to $1	$3 to $6
1869	Feb. 19	$2	.20	.35	*$2.50	20%	*$2.50	a.50 to $1	$3 to $6
1869	Feb. 24	$2	.20	.35	*$2.50	20%	*$2.50	a.50 to $1	$3 to $6
1870	July 14	$2	.20	.35	*$2	20%	*$2	.25 to a$1	$1.50 to $6
1870	Dec. 22	$2	.20	.35	*$2	20%	*$2	.25 to a$1	$1.50 to $6
1871	Jan. 30	$2	.20	.35	*$2	20%	*$2	.25 to a$1	$1.50 to $6
1871	Feb. 10	$2	.20	.35	*$2	20%	*$2	.25 to a$1	$1.50 to $6
1872	March 5	$2	.20	.35	*$2	20%	*$2	.25 to a$1	$1.50 to $6
1872	April 5	$2	.20	.35	*$2	20%	*$2	.25 to a$1	$1.50 to $6
1872	May 1	$2	.20	.35	*$2	20%	*$2	.25 to a$1	$1.50 to $6
1872	June 6	$2	.20	.35	*$2	20%	*$2	.25 to a$1	$1.50 to $6
1872	June 10	$2	.20	.35	*$2	20%	*$2	.25 to a$1	$1.50 to $6
1873	Feb. 14	$2	.20	.35	*$2	20%	*$2	.25 to a$1	$1.50 to $6
1873	March 1	$2	.20	.35	*$2	20%	*$2	.25 to a$1	$1.50 to $6
1873	March 3	$2	.20	.35	*$2	20%	*$2	.25 to a$1	$1.50 to $6
1873	May 9	$2	.20	.35	*$2	20%	*$2	.25 to a$1	$1.50 to $6
1874	June 3	$2	.20	.35	*$2	20%	*$2	.25 to a$1	$1.50 to $6
1874	June 18	$2	.20	.35	*$2	20%	*$2	.25 to a$1	$1.50 to $6
1874	June 22	$2	.20	.35	*$2	20%	*$2	.25 to a$1	$1.50 to $6
1874	June 22	$2	.20	.35	*$2	20%	*$2	.25 to a$1	$1.50 to $6
1875	Feb. 8	$2	.20	.35	*$2	20%	*$2	.40	$1.60
1875	March 3	$2	.20	.35	*$2	20%	*$2	.40	$1.60
1875	March 3	$2	.20	.35	*$2	20%	*$2	.40	$1.60
1876	Aug. 15	$2	.20	.35	*$2	20%	*$2	.40	$1.60
1879	July 1	$2	.20	.35	*$2	20%	*$2	.40	$1.60
1882	May 4	$2	.20	.35	*$2	20%	*$2	.40	$1.60
1882	Dec. 23	$2	.20	.35	*$2	20%	*$2	.40	$1.60
1883	March 3	*$2	.20	.35	*$2	20	*$2	50	$1 60 to $7
1884	June 26	*$2	.20	.35	*$2	20	*$2	50	$1 60 to $7
1890	Feb. 18	*$2	.20	.35	*$2	20	*$2	50	$1.60 to $7
1890	June 10	*$2	.20	.35	*$2	20	*$2	.50	$1.60 to $7
1890	Oct. 1	*$2.50	.20	40	*$2.50	45	*$2 50	50	$1 60 to $8
1894	Aug. 27	*$1.80	.15	30	*$1 80	40%	*$1.80	30	$1 60 to $8
1897	July 24	*$2.25	.20	40	*$2.25	45	*$2.25	40	$1 60 to $8
1909	Aug. 5	$2.60	.23		$2.60		$2 60	† 45	$1 85 to $9.60

* Proof gallon. a Plus 25 per cent.

† If more than 14 per cent. absolute alcohol, the tariff is 60 cents.

Internal Revenue.

CHAPTER III.

The Internal Revenue of the United States, or "excise," as the system is usually termed in England, is an inheritance from European countries. In England the system is about 250 years old, the first British excise law* having been enacted by the Long Parliament in 1643. In France the system originated in the fifteenth century, during the reconstruction of the monarchy after the English wars. The excise has since become the settled policy of most European nations as a prominent part of their fiscal system. While the excise has become, in general, the settled policy of the European nations, it has been resorted to in America only in times of unusual financial need, and, excepting the War Revenue tax of 1862, such a tax has always been promptly repealed as soon as the pressure which called it into existence had abated.

Violent hatred of anything like internal or direct taxation was a marked characteristic of the American Colonies. This feeling was accentuated by the attempts of King George's government to force the policy upon the colonists in a most offensive manner.

* Sinclair: History of the Revenue, Vol. I, pp. 46, 278.

"I will never burn my fingers with an American stamp tax," said William Pitt. The famous Stamp Act of March 27, 1765, which first aroused the revolutionary sentiment among the Colonists, contained provisions requiring stamps on liquor licenses.* This same hostility came to the surface in the controversy over the tax levied by Parliament on tea imported into the Colonies of America. While this item was strictly an import tax, it was looked upon by the Colonists as a part of an excise system, and especially onerous because levied without their consent. The widespread resentment of the people against this tax found expression in the agreement entered into by the Virginia Delegates, assembled at Williamsburg, August 1, 1774, which contained the following item:

"Art. 3d. Considering the article of tea as the detestable

* The following is the text of these sections: "18. For every skin or piece of vellum or parchment, or sheet or piece of paper, on which shall be engrossed, written, or printed any license for retailing spirituous liquors, to be granted to any person who shall take out the same within the said colonies and plantations, a stamp duty of twenty shillings.

"19. For every skin or piece of vellum or parchment, or sheet or piece of paper, on which shall be engrossed, written or printed any license for retailing of wine, to be granted to any person who shall not take out a license for retailing of spirituous liquors, within the said colonies and plantations, a stamp duty of four pounds.

"20. For every skin or piece of vellum or parchment, or sheet or piece of paper, on which shall be engrossed, written, or printed any license for retailing spirituous liquors within

instrument which laid the foundation of the present sufferings of our distressed friends in the town of Boston, we view it with horror:—and therefore, Resolved, That we will not, from this day, import tea, of any kind whatever; nor will we use it, nor suffer such of it as may now be on hand to be used, in any of our families."

This agreement spread like wild fire throughout the colonies, and a period of abstinence from tea was generally observed. This same hostility to an internal tax was felt, even when the colonies enacted such legislation in their own behalf. On September 26, 1756, the colony of Pennsylvania enacted an excise law, levying a tax on retailers of foreign spirits. Great difficulty was experienced in collecting the excise, which was increased in 1772 (Act of March 2), when the excise was extended to rum, brandy and domestic spirits. The Act was amended in 1779, but still it proved to be unsatisfactory, and was soon repealed.* About the same time, New Jersey attempted to collect an excise, but failed.

This political feeling against an internal revenue tax was intensified by the impoverished condition in which the young nation found itself at the close of the Revolution. War had scattered and destroyed the industries of the country to such an extent that little was left available for taxation.

In his letters (later pamphlet editions known as **The Federalist**) to the newspapers, Alexander Hamilton had incidentally defended the policy of an internal

* Pennsylvania Archives, 2d Series, Vol. IV. p. 30.

tax, but astutely refrained from then pressing the proposal against the prejudices of the people. But after the establishment of the Constitution and the passage of the Customs Tariff Act of 1789, the government still felt pressing need of further revenues. As the depreciated debt of the government was held largely at home, the people became ready to listen to new proposals of taxation. The initial proposal, however, met with a hostile reception. On December 29, 1790, Robert Morris introduced into the Senate a memorial from the College of Physicians and Surgeons of Philadelphia praying that "such heavy duties may be imposed upon all distilled spirits as shall be more effectual to restrain their intemperate use." On the following day, George Clymer introduced into the House the same memorial.* Notwithstanding that the proposal was made solely for moral purposes, the memorial excited the wrath of the ultra opponents of excise. The fiery General James Jackson referred to the memorialists, on the floor of the House, as "those gentlemen of the squirt," who "attempted to squirt morality and instruction into the minds of members."† The time quickly came, however, for Alexander Hamilton, Secretary of the Treasury, to throw the weight of his powerful influence directly upon an excise proposal. On March 5, 1792, Hamilton sent to the House an elaborate argument in favor of an excise tax upon

* Annals of Congress, Vol. II, pp. 1740, 1838.

† Ibid, p. 1791.

ardent spirits* "There can surely be nothing in the nature of an internal duty on a consumable commodity more incompatible with liberty than that of an external duty on a like commodity," he argued. Hamilton's report was followed, on April 27, by the passage of a resolution by the House of Representatives looking to an internal tax on distilled spirits. A committee was appointed, headed by Thomas Fitzsimmons, to draft a bill. Such a bill, "to discourage the excessive use of those [ardent] spirits, and promote agriculture, to provide for the support of the public credit, and for the common defense and general welfare," was reported on May 5, but suffered defeat on June 14, by a vote of 26 to 13. Another attempt, in the following year, was successful, and the first internal revenue act of the United States† was approved March 3, 1791. It levied the following excise duties on all spirits distilled after June 30, from molasses, sugar, or other foreign materials:‡

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* American State Papers, Vol. I, p. 151. This communication is one of the most scholarly and masterful defenses of internal excise ever written.

† This law was probably drafted by Alexander Hamilton himself. **Vide** Fifth Special Report, United States Revenue Commission, Feb., 1886.

‡ Seybert, Statistical Annals of the United States, p. 455 All computations from the beginning were made by Dycas' Hydrometer.

Class.	Per gallon.
More than 10 per cent below proof	11 cents
From 5 to 10 per cent below proof	12 cents
Proof and not more than 5 below proof	13 cents
Above proof and not over 20	15 cents
From 20 to 40 above proof	20 cents
More than 40 above	30 cents

The duty on spirits distilled from domestic materials was:

Class.	Per gallon.
More than 10 per cent below proof	9 cents
From 5 to 10 per cent below proof	10 cents
Proof and not more than 5 below proof	11 cents
Above proof and not more than 20	13 cents
From 20 to 40 above proof	17 cents
More than 40 above	25 cents

This act was temporary, and gave way to the permanent law approved May 8, 1792, which reduced somewhat the rates given above, but also levied a capacity tax on stills, and provided a drawback on spirits imported.

Two more years of agitation prepared the people for a license tax on retailers of wines and spirits, the Act of June 5, 1794, "laying a duty on licenses for selling wines and foreign distilled spirituous liquors by retail." Under this Act, every person who sold wines, to be sent out of the house, in less quantities than 30 gallons, except in the original cask, case, box or package, was declared to be a retail dealer; and every person who sold foreign distilled spirits in the manner aforesaid, in less quantities than 20 gallons, was also a retail dealer. A license fee of $5 was re-

quired for each class of license, even though both were held by the same person. The law was to continue in force from September 30, 1794, to March 5, 1801, expiring by its own limitation.

The passage of this legislation was followed by acute problems of enforcement. In many remote sections of Pennsylvania, North Carolina and Virginia, the farmers found it more convenient, owing to lack of transportation facilities, to distill their grain and market the whisky, than to transport the grain itself. These people were loath to pay the hated excise tax, and a spirit of insurrection became rife in several states. In western Pennsylvania the opposition took the form of general and open rebellion against payment. This spirit was somewhat fomented and encouraged by the hostile action of the state legislature itself. On June 22, 1791, while the original tax proposal was being agitated, the Pennsylvania legislature passed the following:

"Resolved, That any proceeding on the part of the United States, tending to the collection of revenue by means of excise, established on principles subversive of peace, liberty and the rights of the citizens, ought to attract the attention of this House.

"Resolved, That no public urgency within the knowledge or contemplation of this House, can, in their opinion, warrant the adoption of any species of taxation which shall violate those rights which are the basis of our government, and which would exhibit the singular spectacle of a nation resolutely oppressing the oppressed in order to enslave itself.

"Resolved, That these sentiments be communicated to the Senators representing the state of Pennsylvania in the Senate

of the United States, with a hope that they will oppose every part of the excise bill now before Congress, which shall mitigate against the rights and liberties of the people."

The storm center of the insurrection was in the four counties west of the Alleghany mountains, a section settled largely by Scotch Presbyterians. Collector after collector was appointed by the Treasury Department, but they couldn't collect. Finally, in 1793, an adventuresome ex-saloonkeeper from Philadelphia, William Graham,* was appointed "collector general" of the troubled district. The angry people cut off the tail of Graham's horse, set fire to his wig, put coals in his boots, and finally besieged him in a saloon, where they captured him and shaved his head, afterward chasing him out of the country and posting notices offering rewards for his scalp. A justice of the peace next tried and failed to make collections. A man named Hunter then made several seizures, and instituted seventy suits against distillers, which were promptly set aside by the court, whereupon Hunter gave up.

Numerous outrages were committed. Mails were robbed, buildings burned, and finally one government officer was tarred and feathered, the local militia aiding in the proceedings. Governor Miffin refused to call out the State Militia, and finally President Washington called on the Governors of the states of New

* Graham was former proprietor of the "Black Horse Tavern" and also of the "King of Prussia," another Philadelphia saloon, but failed in business.

Jersey, Maryland, Virginia, and Pennsylvania for 15,000 men. Command of the forces was given to General Henry Lee, of Virginia, but before the troops arrived on the scene the "insurgents" submitted, and agreed to behave themselves and pay the excise taxes.* What might have been a serious complication was thus peacefully settled, but not until the Government had expended about $1,500,000 in war preparations. Upon the submission of the "insurgents," President

* Many of the actors in this "Whisky Rebellion" found it necessary to write a book to defend themselves and attack somebody else. William Findley, an Irishman and opponent of Washington, was charged with instigating the trouble. He wrote a book, the "History of the Insurrection in the Western Counties," (1796) in order to clear himself and attack Hamilton. Hugh H. Brackenridge, who was arrested for complicity in the troubles, but was never prosecuted, wrote his "Incidents of the Insurrection in the Western part of Pennsylvania," (1795) as he said, "with a view to explain my own conduct which has not been understood." Fifty years later, descendants of these actors took up the controversy. Nelville B. Craig, whose father was implicated as a revenue inspector, wrote his "History of Pittsburg" (1851), in which he scandalized H. H. Brackenridge. This drew out another "History of the Western Insurrection," (1859), this time by H. M. Brackenridge, to defend his father and roast Craig. Craig responded with another volume, an "Exposure of a Few Statements by H. M. Brackenridge." To this day, disputes, charges, and counter-charges, growing out of the refusal of the distillers of Western Pennsylvania to pay their taxes, crop out regularly in the newspapers and debates of that state.

Washington promptly issued a proclamation,* dated July 10, 1795, granting a general amnesty to all persons implicated in the insurrection; and the difficulty subsided.

The trouble, however, had its political result. Those who had opposed the excise became popular with the former insurgents. "The excise law is an infernal one," declared Thomas Jefferson.† The Whisky Rebellion was a symptom, rather than the cause, of the rising political tide which swept the Federalist party from power, and placed Thomas Jefferson in the President's chair. With the incoming of Jefferson, the liquor license tax expired by limitation. In his first message to Congress (Dec. 8, 1801), President Jefferson felicitated that body upon the satisfactory financial condition of the Treasury, and suggested that "there is now reasonable ground of confidence that we may now safely dispense with all internal taxes, comprehending excise, stamps, auctions, licenses, carriages and refined sugars, to which postage may be added to facilitate the progress of information, and that the remaining sources of revenue will be sufficient to provide for the support of the government, to pay the interest on the public debts, and to discharge the principals within shorter periods than the

* For the text of this proclamation, see Sparks: Washington, Vol. XII, p. 134, or Richardson: Messages and Papers of the Presidents, Vol. I, p. 181.

† Letter to James Madison, Dec. 28, 1794: Writings of Thomas Jefferson, Washington edition, Vol IV. p. 112.

laws or the general expectation had contemplated."* A greater tribute could hardly have been paid to the administrative genius of Hamilton, though the message was far from being intended as such. Twelve years before, he had taken charge of the nation's finances, at a time when chaos was rampant, a consuming war in progress, with Tories undermining and plotting trouble, and the value of the government's obligations standing at ten cents on the dollar. In a little more than a decade Hamilton had brought order out of the wreckage, and created a condition in which, according to his most powerful opponents, it was possible to abolish entirely the system of internal taxation. It is true that Mr. Jefferson was bitterly opposed to internal tax,† but he did not mention this as a reason for abolishing that system of taxation. A couple

* Richardson: Messages and Papers of the Presidents, Vol. I, p. 328.

† In his later years, Jefferson somewhat modified his hostility to an internal revenue. In a letter to General Samuel Smith, dated May 2, 1823, he explained:

"Viewing that tax as a system of excise, I was once glad to see it fall with the rest of the system.....Considering it only as a fiscal measure, that was right. But the prostration of body and mind which the cheapness of this liquor is spreading through the mass of our citizens, now calls the attention of the legislator on a very different principle——— A tax on whisky is to discourage its consumption; a tax on foreign spirits encourages whisky by removing its rival from competition. The price and present duty throw foreign spirits already out of competition with whisky, and accordingly they are used to but a salutary extent. You see no persons besotting themselves with imported spirits, wines, liquors, cordials, etc. Whisky claims itself alone the exclusive office of sot-making."—Works of Thomas Jefferson, Washington edition, Vol. VII, p. 285.

of years later, Congress acted upon Jefferson's recommendation, and the internal revenue system established by Alexander Hamilton came to an end.

The following tabulation shows the number of retail liquor license issues of each class, and the amount of the receipts therefrom, for each year during the life of the Act:

Year Ending Sept. 30.	Number Licenses.		Revenue Therefrom.
	Wine.	Spirit.	
1796	4,177	8,592	$63,764
1797	4,333	8,446	63,862
1798	4,005	8,959	64,823
*1799	3,541	9,747	66,434
*1800	3,450	9,591	65,159
*1801	3,556	10,282	69,174

*Year ending Dec. 31.

The above licenses for the first year (Oct. 1, 1795, to Sept. 30, 1796) were divided among the states as follows:*

State.	Wine.	Spirit.	Duties.
New Hampshire	152	512	$ 3,320
Massachusetts	558	1,955	12,565
Rhode Island	43	263	1,395
Connecticut	460	1,010	7,346
Vermont	78	237	1,575
New York	833	1,444	11,362
New Jersey	235	367	2,995
Pennsylvania	555	644	5,990
Delaware	77	137	1,058
Maryland	364	580	4,712
Virginia	556	928	7,420
Ohio	No returns.		
Tennessee	7	3	40
North Carolina	73	132	1,025
South Carolina	142	310	2,260
Georgia	44	97	700
Total	4,177	8,592	63,764

* Report of Tench Coxe, Commissioner of Revenue, Nov. 29, 1797, in American State Papers, Vol. I, p. 566.

The second war with England, that of 1812, made necessary another rearrangement of the nation's finances. As a part of the fiscal scheme adopted for carrying on the war, duties on imports were doubled, and a system of excise was inaugurated. The latter included licenses on retailers of "wines, spirituous liquors and foreign merchandise." The Act of August 2, 1813, laid duties on such licenses, to commence January 1, 1814, as follows:

Retailers in towns and villages of 100 families and upwards, living within one square mile, to pay $25 for a full license; wines alone paid $20; domestic and distilled spirits alone, $15; foreign merchandise other than wines and liquors, $15.

Retailers in other places paid: merchandise, wines, spirits, $15; wines and spirits, $12; domestic distilled spirits alone, $10. All duties to continue for one year after the termination of the war.

These taxes, enacted to cease one year after the termination of the war, proved to be wholly insufficient for the public needs. The embarrassment of the Treasury became so great that a special session of Congress had to be called, further loans authorized, and the excise tax revised. The Act of Dec. 23, 1814, levied an additional tax upon retail liquor dealers of fifty per cent to begin Feb. 1, 1815. This additional tax was repealed (Act April 29, 1816), after December 31, 1816, except on salt and those dealers whose stock

was valued at more than $100. All duties were removed (Act Dec. 23, 1817) from December 31, 1817.*

The collections from internal revenue were trivial as compared with those made today, yet they were collected amid many wry faces, and only tolerated by the people as war measures, which were promptly repealed as soon as the finances of the nation would permit. The accompanying table† shows the receipts from customs duties and from internal revenue from the beginning up to 1838. The receipts for internal revenue up to 1814 were wholly from the liquor traffic. After that year other items were included in the tax—silverware, jewelry, household furniture, etc. The collections for internal revenue for the years in which there was no internal revenue is accounted for by the fact that these revenues which were assessed were not wholly collected until some years after the laws authorizing them

* In recommending the removal of this tax, President Monroe, in his first message to Congress (Dec. 2, 1817), explained: "It appearing that the revenue arising from the imposts and tonnage, and from the sale of public lands, will be fully adequate to the support of the Civil Government, of the present Military and Naval Establishments, including the annual augmentation of the latter to the extent provided for, to the payment of the interest on the public debt, and to the extinguishment of it at the times authorized, without the aid of internal taxes, I consider my duty to recommend to Congress their repeal."—Messages and Papers of the Presidents, Vol. II, p. 19.

† Register of the Treasury, Account of Receipts and Expenditures of the United States, 1837, p. 242.

had been repealed. As a matter of fact, a considerable amount was never collected at all.

RECEIPTS FROM DUTIES ON CUSTOMS AND INTERNAL REVENUE.

Year.	Receipts.		Year.	Receipts.	
	Customs.	Internal Revenue.		Customs.	Internal Revenue.
1791	$ 4,399,473	$	1815	$ 7,282,942	$4,678,059
1792	4,443,071	208,943	1816	36,306,875	5,124,708
1793	4,255,307	337,706	1817	26,283,348	2,678,101
1794	4,801,065	274,090	1818	17,176,385	955,279
1795	5,588,461	337,755	1819	20,283,609	229,594
1796	6,567,988	475,290	1820	15,005,612	106,261
1797	7,549,650	575,491	1821	13,004,447	69,028
1798	7,106,062	644,358	1822	17,589,762	67,666
1799	6,610,449	779,136	1823	19,088,433	34,242
1800	9,080,933	809,397	1824	17,878,326	34,663
1801	10,750,779	1,048,033	1825	20,098,713	25,771
1802	12,438,235	621,899	1826	23,341,332	21,590
1803	10,479,418	215,180	1827	19,712,283	19,886
1804	11,098,565	50,941	1828	23,205,524	17,452
1805	12,936,487	21,747	1829	22,681,966	14,503
1806	14,667,698	20,101	1830	21,922,391	12,161
1807	15,845,522	13,051	1831	24,224,442	6,934
1808	16,363,551	8,211	1832	28,465,237	11,631
1809	7,296,021	4,044	1833	29,032,509	2,759
1810	8,583,039	7,431	1834	16,214,957	4,196
1811	13,313,223	2,296	1835	19,391,311	10,459
1812	8,958,778	4,903	1836	23,409,941	370
1813	13,224,623	4,755	1837	11,169,290	5,494
1814	5,998,772	1,662,985			

About ten years after the special taxes levied to pay the expenses of the Second War with England had been repealed, another attempt was made to resurrect the internal revenue system. The proposal made, however, was only to levy such a tax upon spirits, they being always and everywhere an attractive object of taxation in all forms. In 1826 resolutions were considered in the House of Representatives, reciting that "it is expedient to increase the duty

on all imported spirit, and to levy an excise on domestic liquors." The matter was referred to a select committee which reported favorably, saying in part:

"The committee, however, have no hesitation in expressing their opinion that no fairer subject of taxation and revenue can be presented to the government than ardent spirit, whether foreign or domestic; and they would desire to see a larger portion of our revenues derived from this source, and that some of the more immediate articles of prime necessity to the comfort of the poor, and the middle classes of society, might be free from duty."*

The excise recommendation of the committee failed of adoption by Congress.

From the year 1818, up to the outbreak of the Civil War, the internal traffic in and manufacture of intoxicating liquors was wholly unrestricted and untaxed by the Federal government. During the same period, a changing customs duty was levied on imported liquors, sometimes small, and sometimes a heavy one, but always sufficient to protect the internal liquor traffic from serious foreign competition. In this period of more than forty years, while the traffic in intoxicating liquors suffered no restraint from and carried no burdens imposed upon it by the Federal government, it was exposed to savage assaults from the states. These attacks came thick and fast. In this period was waged the war against the traffic by the American Temperance Society, the American Temperance Union, the Washingtonian movement, the

* Report House Select Committee, May 19, 1826, Nineteenth Congress, First Session.

Father Mathew and other crusades, and the fraternal temperance organizations led by the Sons of Temperance. By the close of 1855, fourteen states were wholly under prohibitory law. It was in this epoch that the prerogatives of the states were more jealously guarded than at present, and many functions of government were left to them that have since been taken over by the Federal government. The development of central authority has chiefly taken place since the Civil War.

To meet the expenses of this appalling struggle, taxation of the most drastic character was resorted to. The customs duties were raised to an extraordinary point, and an internal revenue tax of the most far reaching character was resorted to in 1862. In the Act of July 1, of that year, Congress deliberately taxed everything that would yield a revenue, and fine questions of ethics were almost wholly overshadowed in the one pressing need of revenue. Yet when it came to the proposal to license the retail dealers in intoxicating liquors there was a most vigorous protest in both houses of Congress. In the House, the measure was introduced by Anson P. Morrill* of Maine. In introducing the measure, Mr. Morrill paid his respects to the traffic in whisky as follows:

"The consumption will not be seriously checked; and if it could be, such a result would bring us no national disgrace.

* In 1853, when the Democratic party of Maine decided to oppose Prohibition, Mr. Morrill bolted his party, and ran for Governor on a Free Soil and Prohibition platform.

Whisky and rum with the duty added, will still leave it possible for any man or brute to get drunk in our land on cheaper terms than in any other that I know of."*

Again referring to the proposed tax on wholesalers, Mr. Morrill said:

"If you make this tax so high as to prohibit the traffic, which it does not propose to do, you can do no more valuable service to your country. I would make the tax so high that no wholesaler or retail dealer could be found in the land, if it were practicable. If you would do that, if you could entirely stop the use of intoxicating drinks and the war rage on, your country would suffer less by the war than it has and does from the use of intoxicating liquors."†

The contest in the House over the licensing of the liquor traffic took the form of opposition to the proposal to license retail dram sellers in Prohibition states. Representative Sargent, Harrison and Woodruff proposed various amendments to limit the licensing of the traffic to territory where the state and local authorities recognized the traffic as a lawful one.‡

The debate over this proposal continued through-

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* Congressional Globe, 37th Congress, 2d Session, Part II, p. 1195.

† Id., p. 1327.

‡ These proposals were directly in line with the policy adopted in the two previous internal revenue laws. The Act approved June 5, 1794 contained the following proviso (Sec. 3): "Provided always that no license shall be granted to any person to sell wines or foreign distilled spirituous liquors, who is prohibited to sell the same by the laws of any state."

The Act of Aug. 2, 1813, contained the following:

"Sec. 3. . . . Provided always, that no license shall be granted to any person to sell wines, distilled spirituous liquors, or merchandise, as aforesaid, who is prohibited to sell the same by any state."

out most of the day (March 21). In this debate, Congressman Morris made this most interesting proposal, which, however, was ruled out of order by the chair:

"That the United States ought to co-operate with any state which may adopt gradual abolishment of the evils resulting from the sale of intoxicating liquors, giving to such state pecuniary aid to be used by such state, in its discretion, to compensate for the inconveniences, public and private, produced by such a change of systems."*

This debate delved into the borders of numerous unsettled questions involving the relationship between the states and the general government—relationships which were not provided for in the adoption of the constitution in 1789, because the delegates were unable to agree upon any policy. The failure of the Fathers to outline some policy in this respect left a legacy of endless troubles for the succeeding century,

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* Id., p. 1329. It was at this time that the proposal was being agitated similarly to assist states that would abolish slavery. The proposal was for the Federal government to assist by compensating the slave owners through the states that would adopt such a policy. At the suggestion of President Lincoln, Congress, on April 10, 1862, passed the following joint resolution:

"Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States ought to co-operate with any state which may adopt the gradual abolishment of slavery, giving such state pecuniary aid, to be used by such state in its discretion, to compensate for the inconveniences, public and private, produced by such a change of system."

and was the prime cause of the titanic struggle between the states. But in this particular debate in the House fiscal questions so overshadowed all other interests that a compromise was adopted, in which the precedent set in the two preceding internal revenue acts, which prohibited the licensing of the traffic in Prohibitory territory, was overturned. The plan agreed upon was the following:

"Retail dealers in liquors, including distilled spirits, fermented liquors, and wines of every description, shall pay twenty dollars for each license. Each person who shall sell or offer for sale such liquors in quantities less than three gallons at one time, to the same purchaser, shall be regarded as a retail dealer in liquors under this Act. But this shall not authorize any spirits, liquors, wines or malt liquors to be drunk on the premises.

In the Senate, the debate took a broader scope, the general principle of licensing the retail traffic being itself savagely attacked. On May 27, Senator Henry Wilson of Massachusetts moved to strike out the offensive section, saying:

"My reason for making this motion is that I do not think any man in this country should have a license from the Federal government to sell intoxicating liquors. I look upon the liquor trade as grossly immoral, causing more evil than anything else in this country, and I think the Federal government ought not to derive a revenue from the retail of intoxicating drinks. I think if this section remains in the bill, it will have a most demoralizing influence upon the country, for it will lift into a kind of respectability the retail traffic in liquors. The man who has paid the Federal government twenty dollars for a license to retail ardent spirits will feel that he is acting under the authority of the Federal govern-

ment, and that any regulations, state or municipal, interfering with him, are mere temporary and local arrangements, that should yield to the authority of the Federal government. Sir, I hope the Congress of the United States is not to put upon the statute book of the country a law by which tens of thousands of persons in this country who are dealing out ardent spirits to the destruction of the health and life of hundreds of thousands and the morals of the nation, are to be raised to a respectable position by paying the Federal government twenty dollars for a license to do so.

"I tell you, Sir, there is not a rumseller, or a friend of the rumseller on this continent that will not welcome this tax. It will be hailed from one end of this country to the other by the whole rumselling interests of this country. If the rumsellers of the country had held a national convention they would have asked you to put precisely such a thing as a license to sell liquors in your bill. There is no doubt of it at all. Why, sir, it has been the struggle of the retailers of rum all over this country for a quarter of a century to adopt the license system and get licensed. They have contended for it; they have fought for it; they have carried it to the polls; they have carried it to your legislative assemblies; they have carried it everywhere; and now the Congress of the United States proposes to establish the system rejected by many of the states as sanctioning crime, and do not grant them at all. Does it tend to the consumption of ardent spirits in this country to tax its manufacture? Certainly not. But when we come to the retail trade of it, if this government will give every man who asks it a license to sell liquor, you will shingle this nation over with licenses to sell liquor. We are now told that if the government should license in those states where it is prohibited, the liquor dealer would run his risk. That is true; but suppose the government does come into any state and gives every applicant who desires it a license, and let him run his chance. I will tell you what the effect will be.

It will give immense power and strength to the liquor selling interests. It will give them power and weight to contest and put down the state laws practically, if not repeal them altogether. Sir, for one, I shall not vote for this bill with this provision in it. I cannot record my name for an act to give the countenance and sanction of this nation to the retailing of intoxicating drinks to the people. I cannot, I will not, give a vote for a bill that shall put in any man's pocket the right to retail intoxicating liquors to the people of this country."*

The assault of Senator Wilson on the license plan was ably supported by Senator Pomeroy from Kansas. The force of the attack, however, was dulled by the fact that the Chairman of the Ways and Means Committee, who managed the measure in the Senate, was William Pitt Fessenden of Maine, who, by his stout championship of Prohibition measures in his own state, had caused him to be classed among the "Ramrods," a term applied to the radical enemies of the saloon in Maine. Mr. Fessenden took the position that while nominally a license, it did not authorize the sale as against state law, and pointed to the following clause of the bill to substantiate his claim:

"That no license hereinbefore provided for, if granted, shall be construed to authorize the commencement or continuation of any trade, business, occupation, or employment therein mentioned, within any state or territory in which it shall be specially prohibited by the laws thereof, or in violation of the laws of any state." †

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* Congressional Globe, 37th Congress, 2d Session, Part III, pp. 2376-2378.

† Id., pp. 2379 et seq.

This provision, and the fact that it was regarded as only a temporary measure to meet the requirements of the war, won for the bill the support of some of the most influential opponents of the saloon of the day.* These men took the view that, while the bill nominally licensed the traffic, it gave no authority to sell as against state law, and was therefore, a burden so far as it went. In 1866 (Act of July 13) the Internal Revenue Act of 1862 was remodelled. Among the alterations made was to change the "license" of the retailer into a "tax," and merely issue a receipt for the money. This Act fixed the tax on "retail liquor dealers" at $25, and on "retail dealers in malt liquor" at $20, which rates have since remained. This policy of "taxing" the retailer of vice has begotten a series of complications. Many of the states have declared, in their legislation, that the payment of this special

* Major J. B. Merwin, a personal friend of President Lincoln, who had been associated with Lincoln in temperance work in Illinois, and who in the early stages of the war was engaged in visiting the camps of the Union Army conducting a temperance propaganda among the soldiers under credentials from General Winfield Scott, is authority for the statement that President Lincoln was hostile to the provision licensing the retail traffic in liquors, and only assented thereto when assured by such men as Salmon P. Chase and William H. Seward that the obnoxious feature would be eliminated when the pressing need therefor was over. Henry Wilson, who frequently voiced the President's views on the floor of the Senate, expressed Mr. Lincoln's dissatisfaction at the licensing proposal.

tax as a liquor dealer shall constitute prima facie evidence that the holder thereof is engaged in the business of a retail liquor dealer. A Federal statute also provides* that a list of such taxpayers, with the addresses and class of each, shall be kept for public inspection in the office of each collector of revenue. The making of these tax receipts prima facie evidence that the holders thereof were engaged in the business created a great demand for the presence of collectors to testify in local courts as witnesses in various proceedings against liquor dealers. Partly to avoid this annoyance, and partly to shield as far as possible delinquent liquor dealers who were regarded as "customers" or "taxpayers" of the Internal Revenue Department, the Secretary of the Treasury established a regulation† forbidding collectors from giv-

* Sec. 3240, R. S. (Act of Dec. 24, 1872, amended by the Act of June 21, 1906) reads:

"Sec. 3240. Each collector of internal revenue shall, under regulations of the Commissioner of Internal Revenue, place and keep conspicuously in his office, for public inspection, an alphabetical list of the names of all persons who shall have paid special taxes within his district, and shall state thereon the time, place, and business for which such special taxes have been paid, and upon application of any prosecuting officer of any state, county, or municipality he shall furnish a certified copy thereof, as of a public record, for which a fee of one dollar for each one hundred words or fraction thereof in the copy or copies so requested may be charged."

† Regulations, Series 7, No. 12, Aug. 3, 1896; Regulations April 15, 1898, pp. 41, 42; Regulations April 18, 1904, p. 45. See also Sections 161, 251, 321 and 3167, Revised Statutes U. S.

ing such testimony even when subpoenaed by a state court. Grave abuses grew up under this ruling in distilling districts, where spirits of great value were stored in bonded warehouses for long periods of time while aging. Until these spirits were withdrawn for consumption, under the law, the Federal internal revenue duties were not paid. Inasmuch as the internal revenue officials refused all information as to the contents of these warehouses, the local tax authorities were compelled to accept, for purposes of taxation, whatever values the distillers placed upon their holdings. These distillers evaded taxation of their holdings by returning ridiculously small amounts of whisky as being in their possession. An attempt made in Kentucky in 1899, to compel the distillers to pay their taxes, met with failure. The auditor's agent instituted civil proceedings in Carroll County, Kentucky, against Elias Block & Sons, distillers, under the provisions of Sec. 4241 (Ky. Statutes), to compel, for purposes of taxation, an assessment of spirits held by them in bonded warehouses. David N. Comingore, Collector of Internal Revenue, was subpoenaed before W. A. Price, notary public, and, upon his refusal to testify, was fined $5 and sentenced to jail for six hours, or, until he would consent to respond. This sentence was immediately confirmed by the county court at Covington, Ky. Thereupon Collector Comingore brought habeas corpus proceedings in the United States District Court, where he was discharged from

custody. In rendering his decision, (July 5, 1899) Judge Evans affirmed:

"That the reports are executive documents which the United States, in its sovereign capacity, has acquired for the sole purpose of administering its own governmental affairs.

"That the officers of the National Government cannot be compelled by another sovereignty to put these documents at its disposal without some express law of the United States authorizing it.

"That the reports are a part of Government Archives, accumulated through mere administrative and executive processes, and as such are privileged at least to the extent that no other sovereignty in its own interest can seize or control them for any purpose whatever, without the consent of the sovereign owner lawfully manifested, and

"That the effort to make the collector testify to their contents is virtually an attempt to compel the United States to produce them."*

This cause of vital importance to the local taxing authorities of distilling districts, naturally was appealed to the Supreme Court of the United States, where the decision of Judge Evans was affirmed.† In handing down the decision of the Supreme Court, (April 9, 1900) Justice Harlan said:

"In our opinion, the Secretary, under the regulations as to custody, use, and preservation of the records, papers and property, appertaining to the business of his department may take from a subordinate, such as a collector, all discretion as to permitting the records in his custody to be used for any

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* For a full record of this case, see Treasury Decisions, 1899, Vol. II, p. 388 **et seq.**

† Boske vs. Comingore, 177 U. S., p. 459.

other purpose than the collection of the revenue, and reserve for his own determination all matters of this character."

Since the rendering of this decision, it has been practically impossible for state and local taxing authorities to compel distillers to pay taxes on spirits held in bonded warehouses during the years of aging process. The distillers habitually make returns of nominal holdings which the assessors are compelled to accept, having no other recourse.

In the Indian Territory, prior to the organization of the state of Oklahoma, these Federal tax receipts of retail liquor dealers were frequently used, even in the Federal courts, as evidence against liquor sellers who sold liquor contrary to Federal law, the Territory then being under prohibition by Federal enactment (Act of March 1, 1895). The spectacle of one branch of the government levying a tax upon a criminal business, and another branch of the same government bringing prosecutions, virtually for the payment of the same tax, naturally created much criticism and confusion. Various bills have been introduced into Congress to resurrect the provisions of the laws of 1794 and 1813, which limited the issuing of tax receipts or license to those who are authorized to sell by state law.

Some opposition to this legislation, however, has emanated from the Prohibition camp. Many enemies of the saloon have found these tax receipts more or less useful in prosecutions. Others ignore the obligations of the government to protect its taxpayers, and hold that the tax is a burden, and that the burdens on

the saloon should be increased rather than diminished.* In the debate over the passage of the Act of 1862, Senator Charles Sumner suggested the following provision, but did not press it to a vote:

"That no license hereinbefore provided shall be granted for any trade, business, occupation, or employment within any State or Territory, except to such persons as may be authorized by the laws thereof." †

The heavy taxation upon the traffic at the outbreak of the Civil War was followed by changes in the public status of the business. Prior to the war,

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* Senator Wilson, while vigorously opposing the license of 1862, was not opposed to a tax. In the debate over the bill, he declared: "I do not object to taxing liquor sellers; I am willing to tax anybody and everybody; but the distinction between a tax and a license is obvious; you tax a man for importing liquors; that is a tax, and I think the higher the tax the better it is; and if it was so high as to prohibit the importation, so much the better. You tax a manufacturer of liquor, and the higher you tax him, the better. I would like to put a tax of a dollar a gallon on all liquor manufactured, and I would like to put enough on it to prohibit the manufacture of a single gallon of liquor in the country if I could. If I had the power to do that, and could do it, I should think that I was a public benefactor. You do not license a man to manufacture liquor, but you give him a license to sell. If this was a question to license men to manufacture liquor in this country, I would vote against it, and oppose it, because it would be giving them a privilege, a grant, a certificate from this government to do that thing."—Congressional Globe, 37th Congress, 2d Session, Part III, p. 2398.

† Id., p. 2400.

when the Federal government held aloof, and the idea of high taxation had not been considered, the traffic stood upon its merits and was subject to open attack on all sides. Having no merit, it was at the mercy of the people and their legislatures. The era of high taxation has revolutionized this situation.

The first effect of the war tax of 1862 was to force a sudden elevation of wholesale prices of liquor. The following tabulation of the wholesale prices of whisky in the New York market for a series of years ending with 1864, illustrates this:

WHOLESALE PRICE WHISKY IN N. Y. MARKETS.*

Year.	Average Price.	Highest.	Lowest.
1858	$ .24½	$ .29	$ .21
1859	.27	.31	.25
1860	.22	.27	.17
1861	.18½	.21	.14
1862	.29	.39	.20
1863	.53	.96	.39½
1864	1.45	2.24	.80

In a report dated February, 1866, these changes in the prices of whisky were discussed in an official report to Congress, which said:

"Previous to the imposition of this tax by the national government, raw whisky was retailed at almost every point in the country at from 7 to 15 cents per quart, or from 25 to 40 cents per gallon.....It was also a very general custom, in many parts of the country, for agriculturists to buy whisky

* Internal Revenue Record, April 7, 1866.

by the barrel for the use of their farming help, and to use it freely as a beverage during the season of harvesting."*

The prices of drinks also increased, and the era of whisky at fifteen cents per glass, or "two for a quarter," was developed. The wholesaler shifted the burden of the taxes upon the retailer. The latter promptly laid it upon the drinkers at the bar. In the last analysis, the tax was largely paid by the women and children of the victims of drink, through the privations they endured by their means of support being squandered for drink by the bread-winner of the family. It came to pass that the retailer found that there was a larger profit in a sale of highly taxed whisky at 12½ or 15 cents per drink, than in tax free whisky at five cents. The liquor traffic thus developed into a machine for collecting government revenues from the weak, the poverty laden and the defenseless.

The liquor dealers eventually learned that the man who wanted a drink would take it anyhow, regardless of the price, provided he could get it. They also found in the high Federal taxes which they paid the government the most effective system ever devised for the intrenchment of the saloon system. While always ready to cut down somewhat the excessive taxes of war periods, the liquor dealer has since stoutly advocated the high tax on his product. John M. Atherton, President of the National Pro-

* Report U. S. Revenue Commission: Executive Document 62, Thirty-ninth Congress, First Session.

tective Association, made up of wholesalers and distillers, explained some of the reasons for this in the following words: *

"Under the Government supervision there are certain marks, stamps, gauges, etc., put on every barrel of whisky, which serve to identify it. These form an absolute guaranty from the Government, a disinterested party of the highest authority, to the genuineness of the goods. There is such a tendency to adulteration that this guaranty is of great value. Next, if the general Government laid no tax upon whisky the States almost certainly would. As they are under no compact to lay the same tax, the rate would almost certainly be unequal. For instance, with a tax of 25 cents a gallon on the whisky produced in Kentucky the State would have an abundant revenue for all her needs, without taxing anything else. But it might happen that Ohio and Indiana would lay no tax, or a very light one, upon whisky. In that case Kentucky distillers would be compelled to manufacture at a very great disadvantage, and would, in fact, be compelled to close altogether. A tax by the National Government bears on all States alike, and affords a fair field for competition."

A year later, when war taxes were being cut away, the United States Brewers' Convention, held in St. Paul, May 30, 31, 1888, expressed its opinion of the Internal Revenue tax on its members' products in these words:

"The old objection urged against excises could not at present be revived, seeing that those who have to bear the tax and all the inconveniences that are said to grow out of its alleged obnoxious features, are perfectly satisfied with their present status, so that, as we have stated on other occasions, whatever commiseration may be felt for them by cer-

* Interview in "The Voice," Dec. 29, 1887.

tain theorists is just so much sympathy wasted. As far as the brewers of this country are concerned, it is well known that, so far from opposing an excise, they materially aided the Government during the incipient stages of the system in making the tax collectable as cheaply and conveniently as possible. Their action at that time was not only prompted by the intention to prevent injustice being done them, but also, in a very large measure, by patriotic motives; while their present course (of non-interference with the Federal tax) is dictated not only by industrial considerations, but also by the conviction, sustained by the experience of our own people and the people of many other civilized countries, that the present system, while perfectly justifiable when viewed from the standpoint of political economy, promotes temperance more effectually than any other measure yet proposed or executed for that purpose..... To judge from present indications, there is no danger of a reduction in Internal Revenue, other than that derived from articles which do not concern us industrially."

The satisfaction of the liquor dealers with the operation of the high tax was so marked that it attracted official recognition. Referring to the internal revenue tax of two dollars per gallon, the Special Commissioner of Revenue reported to Congress, in February, 1866: "On the part of many and perhaps the majority of the leading distillers of the country, an opinion strongly adverse to any alteration of the present excise has been expressed."*

After the passage of the war revenue act of 1862, it became apparent that an internal tax on distilled

* Report U. S. Revenue Commission: Executive Document 62, Thirty-ninth Congress, First Session.

spirits would also be levied within a short time. The distillers accepted this situation with ill concealed glee, became very patriotic, and almost clamored for the tax. At the same time, they secretly laid their plans to prevent the tax being retroactive in any respect; that is, to prevent the tax being laid on the stock on hand, and to lay it only on future distillation. When it became apparent that the scheme would succeed, every distillery in the country began running to its full capacity in order to accumulate as large a stock of tax free whisky as possible to be sold at high prices under the proposed duty. Senator John Sherman seemed to be about the only one in Congress to appreciate fully what this policy meant, and loudly lifted his voice in protest. He said:

"It has been known ever since last July that a tax would be put on whisky, and all the distillers of the country have been running to their extremest capacity, and today they are running more than they have ever done before. Every old still in the country has been set at work, simply because it was supposed that a tax would be put on whisky, and that the stock on hand would not be taxed."

The scheme worked out as the distillers desired. A tax of twenty cents per gallon was laid on whisky, but not to be levied on the supply on hand. This, of course, was equivalent to adding twenty cents to the value of every gallon of whisky which the distillers had accumulated by working overtime at full capacity during the preceding months of strenuous activity.

As soon as the new tax went into effect, distilling practically stopped, and distillers bent their efforts to

disposing of the stock accumulated when no tax was levied. When this stock became low, distillers suddenly became afflicted with another dose of patriotism and clamored for a still higher tax on the same old plan; not to be levied, of course, on the stock on hand. John Sherman, as before, lifted up his voice in protest, but of no avail. The distillers wanted the higher tax. They and the "Third House" plotted by night and sang patriotic airs by day. The result was that, in 1864, Congress three times raised the internal tax on whisky to 60 cents, $1.50 and $2.00 respectively. In no case was the tax to be levied on the stock on hand. Under this manipulation, speculation ran riot, and enormous fortunes were made, in all of which the United States Treasury came out distinctly second best. In the following year, 1865, the Special Revenue Commission was appointed. In one of its early reports it made this statement to Congress, regarding the operation of this species of legislation:

"The immediate effect of the enactment of the first three and successive rates of duty was to cause an almost entire suspension of the business of distilling, which was resumed again with great activity as soon as an advance in the rate of tax in each instance became probable. The stock of whisky and high wines accumulated in the country under this course of procedure was without precedent, and Congress, by its refusal to make the advance in taxation in any instance retroactive, virtually legislated for the benefit of the distillers and speculators rather than for the Treasury and the Government."*

* House Executive Document No. 60, 39th Congress, p. 19.

This was a rather bald statement for a creature of Congress to make to its creator, but with the words of John Sherman ringing in its ears, and with the guilty dollars said to be jingling in the pockets of certain members, the blunder or fraud was so palpable that silence became the better part of valor. This bold manipulation of the law for the benefit of speculators and distillers, a speculation in which the Treasury was robbed of the bulk of the revenue intended for it, created much criticism and indignation throughout the country. To this were coupled additional troubles: Congress had provided no adequate system for collecting the revenues, and for guarding against frauds. The matter of inspecting distilleries was frequently left entirely to the "workmen or partners of the distillery inspected." George Parnell, United States Revenue Agent, testified that distillers manufactured and fraudulently sold without the slightest pretense of concealment, spirits, in quantities ranging from 20,000 to 80,000 gallons, without suspicion on the part of local officers, and that the business was not conducted in all respects legally or honestly. He further stated:*

"There has never been any officer appointed under the revenue act, whose special duty it was to look after the distilleries. The inspectors are paid in the shape of fees, by the distillers. The fees are generally very small. In most cases

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* Quoted by Thomann: Liquor Laws of the United States, p. 223.

all the inspectors ever thought of doing was, to go and inspect the liquors when the distillers sent for them."

In abject despair, Congress finally, in 1868, adopted the recommendation of the Revenue Commission, and cut the tax on spirits from $2 to 50 cents per gallon, hoping thereby the distillers would accept this as an inducement to be honest. This attempt to construct a silk purse from a pig's ear also failed, and Congress then began to devise ways and means to compel the distillers to act as though they were honest. In the development of this purpose Congress has evolved what is probably the most thorough and drastic machine ever devised for compelling a business to pay its legal taxes. The system goes so far that the whole business of the distiller is practically taken possession of by revenue agents, who carry the keys, take charge of the books, inspect and account for every bushel of grain used, and do not even allow the distiller to go upon his own premises except during business hours, and under regulations prescribed by the Treasury Department, which hold him in a perpetual strait-jacket. Like the disorderly boy in the country school who stands in a corner wearing a dunce cap, the distiller is good from mere force of circumstances. The following table, compiled from various reports of the Commissioner of Internal Revenue, gives a survey of the operations of the Internal Revenue Department under the various changes of law since the enactment of the famous War Tax of 1862, so far as distilled spirits are concerned:

RETURNS OF DISTILLED SPIRITS AND TAXES THEREON BY FISCAL YEARS.

Fiscal Years Ended June 30	Rate of Tax at Which Collections Were Made	Average Rate of Tax per Gallon	Aggregate Collections For Each Fiscal Year	Aggregate Quantities For Each Fiscal Year
				Gallons
1863	$0.20	$0.20	$3,229,990.79	16,149,954
1864	.20 to .60	.33 33-100	28,431,797.83	85,295,393
1865	.20 .25 .50 .60 $1.50 $2.00	.94 31-100	16,007,706.99	16,973,974
1866	.50 $1.50 $2.00	1.98 56-100	29,482,077.99	14,847,943
1867	$1.00 $2.00	1.99 91-100	29,164,409.34	14,588,740
1868	$1.00 $2.00	1.97 81-100	14,290,730.98	7,224,809
1869	.50 *.60 $2.00	.54 33-100	33,735,323,68	62,092,417
1870	.50	.50	39,245,099.04	78,490,198
1871	.50	.50	31,157,314.15	62,314,628
1872	.50	.50	33,117,788.99	66,235,578
1873	.50 .70	.65 44-100	43,131,064.78	65,911,141
1874	.70	.70	43,807,093.70	62,581,562
1875	.70 .90	.72 76-100	46,877,938.10	64,425,911
1876	.70 .90	.88 58-100	51,390,490.43	58,012,693
1877	.70 .90	.89 97-100	52,671,291.34	58,543,389
1878	.70 .90	.89 99-100	45,626,533.06	50,704,189
1879	.50 .70 .90	.89 98-100	47,709,464.24	53,025,175
1880	.70 .90	.90	55,919,119.18	62,132,415
1881	.70 .90	.90	62,214,127.56	69,127,206
1882	.70 .90	.90	64,778,756.97	71,976,398
1883	90	.90	69,085,856.73	76,762,063
1884	90	.90	71,655,211.33	79,616,901
1885	.70 .90	.90	62,242,221.97	69,158,025
1886	.90	90	63,766,219.61	70,851,355
1887	.90	.90	60,642,351.66	67,380,391
1888	90	.90	64,408,937.37	71,565,486
1889	.90	.90	69,447,175.84	77,163,529
1890	.90	.90	76,539,002.62	85,043,336
1891	.90	90	79,626,093.51	88,473,437
1892	.90	.90	85,541,209.01	95,045,787
1893	.90	.90	89,231,300.05	99,145,889
1894	90	.90	79,899,647.52	88,777,387
1895	.90 $1.10	.99 5-100	74,837,396.01	75,555,742
1896	.90 $1.10	$1.09 99-100	75,327,897.62	68,480,720
1897	.90 1.10	1.09 99-100	76,967,256.91	69,979,362
1898	1.10	1.10	87,741,223.85	79,764,749
1899	1 10	1.10	93,638,085.27	85,125,532
1900	1.10	1.10	104,375,921.46	94,887,201
1901	1.10	1.10	110,854,703.40	100,777,003
1902	1.10	1.10	115,285,115.90	104,804,651
1903	1 10	1 10	125,862,518.08	114,420,471
1904	1.10	1.10	129,564,242.49	117,785,675
1905	1.10	1.10	129,512,628.19	117,738,753
1906	1 10	1 10	136,965,911.49	124,514,465
1907	1.10	1.10	149,749,338.63	136,135,762
1908	1 10	1.10	133,626,276.45	121,478,433
1909	1 10	1.10	128,315,181.45	116,650,165
1910	1 10	1 10	141,523,554.06	128,657,776

The tax on fermented or malt liquors has not been subject to the fluctuations that have attended the business of distillation; hence the same opportunities for speculation have not appeared. In the year 1860 the brewing industry was in its infancy, comparatively, and it has developed to its present enormous proportions in the face of the internal tax on its products. In an attempt to study this development, the significant fact appears that the number of breweries at present is not much in excess of the number in 1860. The breweries have developed enormously in magnitude and capacity, but not in numbers. Place side by side the breweries of 1860 and 1909, and we have the following record:

Year.	Tax. per Bbl.	No. of Breweries.	Barrels Produced.
1860	No tax	1,269	3,812,346
1909	$1.00	1,622	56,364,360

The vast power that has grown up between the dates represented in these figures is a story that cannot be told in this connection. It is a story of the development of an organized force for evil that has wormed its way into state legislatures, dominated city councils, dictated to prosecuting attorneys, given orders to police departments, furnished sinews of war for political campaigns, conducted a system of saloons in the army for its own benefit. Its own arrogance has proven its undoing and led to popular revolt, for, as these lines are written (1910), the brewing power of the nation is engaged for the first time in its history in a

general and desperate contest for its very existence. The following tabulation shows the fiscal operations of the government in its relations to the breweries, under the War Measure of 1863 and its various successors, all providing a tax on the manufacture of malt liquors.

RETURNS OF FERMENTED LIQUORS AND TAXES THEREON BY FISCAL YEARS.

Fiscal year ended June 30.	Rate of tax at which collections were made.	Aggregate collections for each fiscal year.	Aggregate quantities in barrels for each fiscal year.
1863	$1.00 to $ .60	$ 1,558,083.41	2,006,625
1864	.60 to 1.00	2,223,719.73	3,141,381
1865	1.00	3,657,181.06	3,657,181
1866	1.00	5,115,140.49	5,115,140
1867	1.00	5,819,345.49	6,207,402
1868	1.00	5,685,663.70	6,146,663
1869	1.00	5,866,400.98	6,342,055
1870	1.00	6,081,520.54	6,574,617
1871	1.00	7,159,740.20	7,740,260
1872	1.00	8,009,969.72	8,659,427
1873	1.00	8,910,823.83	9,633,323
1874	1.00	8,880,829.68	9,600,897
1875	1.00	8,743,744.62	9,452,697
1876	1.00	9,159,675.95	9,902,352
1877	1.00	9,074,305.93	9,810,060
1878	1.00	9,473,360.70	10,241,471
1879	1.00	10,270,352.83	11,103,084
1880	1.00	12,346,077.26	13,347,111
1881	1.00	13,237,700.63	14,311,028
1882	1.00	15,680,678.54	16,952,085
1883	1.00	16,426,050.11	17,757,892
1884	1.00	17,573,722.88	18,998,619
1885	1.00	17,747,006.11	19,185,953
1886	1.00	19,157,612.87	20,710,933
1887	1.00	21,387,411.79	23,121,526
1888	1.00	22,829,202.90	24,680,219
1889	1.00	23,235,863.94	25,119,853
1890	1.00	25,494,798.50	27,561,944
1891	1.00	28,192,327.69	30,478,192
1892	1.00	29,431,498.06	31,817,836
1893	1.00	31,962,743.15	34,554,317
1894	1.00	30,834,674.01	33,334,783
1895	1.00	31,044,304.84	33,561,411
1896	1.00	33,139,141.10	35,826,098

Fiscal year ended June 30.	Rate of tax at which collections were made.	Aggregate collections for each fiscal year.	Aggregate quantities in barrels for each fiscal year.
1897	1.00 1.00)	31,841,362.40	34,423,094
1898	2.00) 1.00)	38,885,151.63	37,493,306
1899	2.00)	67,673,301.31	36,581,114
1900	2.00	72,762,070.56	39,330,849
1901	2.00 2.00)	74,956,593.87	40,517,078
1902	1.60)	71,166,711.65	44,478,832
1903	1.00	46,652,577.14	46,650,730
1904	1.00	48,208,132.56	48,208,133
1905	1.00	49,459,539.93	49,459,540
1906	1.00	54,651,636.63	54,651,637
1907	1.00	58,546,110.69	58,546,111
1908	1.00	58,747,680.14	58,747,680
1909	1.00	56,303,496.68	56,303,497
1910	1.00	59,485,116.82	59,485,117

Note.—Prior to September 1, 1866, the tax on fermented liquors was paid in currency, and the full amount of tax was returned by collectors. From and after that date the tax was paid by stamps, on which a reduction of 7½ per cent was allowed to brewers using them. The act of July 24, 1897, repealed the 7½ per cent discount. The act of June 13, 1898, increased the tax to $2.00 per barrel and restored the 7½ per cent discount. The act of March 2, 1901, in force July 1, 1901, provided for a flat rate of $1.60 per barrel. The act of April 12, 1902, in effect July 1, 1902, reduced the tax to $1.00 per barrel.

The collection of a heavy tax, especially a tax from a class of people not suffering from an over production of conscientious scruples, is accompanied by difficulties, and generally by extensive fraud—at least, until the provisions for such collection have been rigidly systematized. Shortly after the War, frauds in the collection of the internal revenue on whisky were developed. These abuses were of the most extensive character. Whisky was sold in the open market at fifty cents per gallon less than the tax itself, and charges against high officials were publicly made. These frauds attracted the attention of the Fortieth

Congress, to which Chairman C. H. Van Wyck, of the Committee on Retrenchment, on March 12, 1868, made a report * on the subject. The report, in part, stated:

"Persons engaged in other branches of business, and all departments of industry, paying honestly their taxes, have been bewildered in the contemplation of these frauds. The whole people know that great crimes were committed, with the connivance, if not assistance, of government officials. An honest payment of the tax on whisky would realize $200,000,000, whereas but little over $25,000,000 is received.

"When whisky is sold at $1.50 in the market, does not every man know that no person is engaged in the manufacture intending to pay honestly the tax of $2 on every gallon."

The report savagely attacked President Johnson, and recommended reducing the tax on distillation to fifty cents per gallon. "If all the various means resorted to by many modern distillers for the accomplishment of their designs upon the revenue could be truthfully written," says the Report of the Collector of Internal Revenue for 1867, (p. 20.) "the very safety of our institutions might well be questioned." The frauds were not confined to the distillers. David A. Wells, in a public address,† while Commissioner of Internal Revenue, said, "By statistical reports it has been proven that 6,000,000 barrels of beer are brewed annually, while only 2,500,000 paid tax." The frauds continued to be public scandal for more than ten years, reaching their culmination in the pilferings of 1873-5,

* Report No. 24, 40th Congress, 2d Session.

† Official Report, United States Brewers' Convention, 1865

during which two years, Commissioner of Internal Revenue, Daniel H. Pratt, stated, the government had been robbed of $4,000,000 through the connivance of high officials.* The repeated exposures of these frauds led to the prosecution of several officials of the Internal Revenue Department. Gen. John McDonald,† Supervisor of Internal Revenue for Missouri, Arkansas, Texas, Kansas, Indian Territory and New Mexico, and two of his fellow conspirators, were convicted and sentenced to terms in the penitentiary. This had the effect of somewhat discouraging the fraudulent practices.

Since the passage of the War Revenue Act of 1862, the tax on the production of beer has remained at $1 per barrel, except during the fiscal year 1863-4, when it dropped for a time to 60 cents.

The Revenue Act approved June 13, 1898, to meet the expenses of the war with Spain, doubled the tax on beer, making it $2 per barrel, but left undisturbed the tax on distilled spirits. The Act approved April 12, 1902, removed most of the special taxes levied to meet the expenses of the war with Spain, and reduced the tax on beer from $2 to $1 per barrel, the ante-bellum basis.

* Vide "Annual Encyclopaedia" for 1875; also **The Voice** Dec. 25, 1890, and Jan. 8, 19, 1891.

† McDonald served seventeen months in the penitentiary before he was pardoned. On his release he wrote a sensational exposure of the "Secrets of the Great Whisky Ring," in which he implicated many prominent officials in the stealing.

During the eighties the temperance people began to oppose the internal revenue system, for about the same reason that the liquor dealers favored it. It had proved to be a bulwark of defense for the traffic, a shelter in time of need. The trade being unable to defend itself on its own merits, found that it could do very well by discussing the needs of the school fund, the police fund, or the road fund, instead. The Convention of the National W. C. T. U., in 1887, sounded the first important note of opposition to the tax on liquors in these words: "We advocate the abolition of the Internal Revenue on alcoholic liquors and tobacco, for the reason that it operates to render more difficult the securing and enforcement of Prohibitory laws, and so postpones the day of national deliverance." Since this time, dissatisfaction at the policy of the government in levying a tax on vice has gradually increased among the friends of law and order. This dissatisfaction is based, not so much on the ethics involved in such a transaction, as on the fact that such a policy has proved to be a most successful bar to progress of the prohibition movement, and the extension of "dry" territory.

"Easy money" has similar allurements to a nation that it has for an individual. The citizen who rents his properties at exorbitant rates for saloons or dives is both skillful and diligent in devising excuses for continuing the policy; he is "not responsible for what is done by someone else;" if he did not let the place

"some one else would do so, and likely rent quarters where more damage would be done;" the "law permits it, and it would be presumptuous to pretend to be better than the law;" then the extortionate rents which he extracts are a "burden on the traffic" and he believes in "adding burdens to evils," and besides, he "applies these rents to philanthropic and godly purposes," which some other landlord might not do. The formulae are very similar to those which appeal to the community, or to the nation hunting excuses for sharing in the plunder easily to be derived from dabbling in the profits of vice. It is discovered that it cannot be suppressed; that it can only be regulated or held in check; that the tax is a burden and should be increased rather than abated; that the school fund needs money and roads are out of repair; at least, vice should aid in paying the expenses which it foists upon the taxpayers. Just as the individual is prone to postpone the day of his regeneration in order that he may add a few dollars to his ill-scented accumulation, so the state hugs the tainted revenue to her bosom, frantically hunting excuses and explanations for continuing the partnership with vice and crime under the cloak of "regulation," "vested interests" and "police requirements." Mr. Bastable, the distinguished authority on matters of taxation and revenue, reaches a similar conclusion: "The whole system," he says, "is a highly artificial one. By it the state draws very large resources from the taxation of what is an instrument of luxury, in many cases one of vice. The aim of reducing

the national consumption of these drinks is naturally postponed to that of maintaining so material a support of the public revenue, and the problem of adjusting the duties between the different classes is very imperfectly dealt with." *

Whatever theoretical or practical advantages may be urged as to a tax on vice being a burden, or means of regulation, or an assessment to aid in paying the expenses incurred thereby, the fact still looms up cold and clear against the horizon of the situation that such a tax inherently carries with it an element for its own protection. As the average man revolts against being the recipient of a favor, and then kicking the one who gave it, so the average community is not inclined to receive money from a traffic for public purposes one day, and destroy the same business on the morrow. Just as a man who takes a bribe dislikes to "squeal," so the community which sells the right to defile and pollute a neighborhood is more inclined to endure things and explain away transactions, than it is to abate the nuisance. It is readily admitted that the tax on vice is a "burden," but so is the bribe money given to a policeman a "burden." As the one burden involves the officer in a sort of thieves' morality obligation to tolerate the law-breaking of the donor of the bribe money, just so the other burden fastens upon the community a sort of moral or immoral obligation to tolerate the licensed nuisance.

* Bastable: Public Finance, p. 485.

The Revenue Aftermath.

CHAPTER IV.

Just as indulgence in alcoholic beverages creates a headache for the individual, so any system of taxation, license or regulation of a vice begets complex questions, situations and problems. These are artificial questions growing out of such a system, and for this very reason they have not had the serious attention of those specially interested in solving the drink problem. The relation of the state toward vice and crime is now entering upon an era of scientific treatment. The almost superhuman appeals of Father Mathew, the bewildering portrayals of John B. Gough, the biting sarcasms of John Adams, the persistent teachings of Dr. Benjamin Rush and Lyman Beecher, the organizing power of John Marsh, the eloquence of Tom Marshal, the physiological charts of Dr. Thomas Sewell, have all had their day and their uses. Each has had its achievements, and fulfilled its mission. These are now of the past, and the state is face to face with the problem of its own course. In its attempts to grapple with, to evade, to compromise, to harness the powers of vice for revenue purposes, the state has groped, stumbled, multiplied blunders, while

accumulating special situations and complications. Some of these, while properly and directly offshoots of our revenue system, are of such a character that it seems best to consider them in a separate chapter. Such questions as bonded warehouses, fortification, adulteration, denatured alcohol, and the relation of retail druggists to the traffic, will be discussed in the order named.

Every lawful distiller must provide a warehouse at his own expense, constructed as the government requires, and then place it in charge of representatives of the Collector of Internal Revenue for the district. The owner cannot even go into his own warehouse except the government representative be present; he cannot take anything out, or put anything into it without the written consent of the government. The government carries a key to the establishment, and its representatives can go in by night or day without asking. If the distiller objects, the revenue officer is authorized to break in, and then fine the distiller up to $1,000 for interfering. The distiller must even furnish the inspectors with ladders to climb up into various parts of the building, and tools to open casks or anything else deemed necessary. If the inspector suspects secret pipes to or from the warehouse, he is authorized to dig up the premises till satisfied. All these provisions and more were provided in the revenue act of July 20, 1868, and have since been sustained by the courts, amplified and perfected by Congress. Personal liberty has never had any standing whatever

when a matter of securing the collection of a few dollars for public purposes was concerned. It is only when the privilege of debauching a weak individual, or when the license to cheat a helpless child out of its bread-winner's wages is concerned, that the cry of "personal liberty" is echoed from Hell Gate in New York to Chinatown in San Francisco. The purpose of the bonded warehouses is to facilitate the transaction of the business, both from the standpoint of the distiller and of the government. It has also the purpose of providing a place of deposit for the distilled spirits during the period of aging, and until the distiller wishes to market the spirits. The distiller pays the revenue tax when he withdraws his product from the warehouse, and from the custody of the government.

In the beginning, the bonded period was but one year. At the end of this time the distiller was compelled to pay the tax. On March 28, 1879, Congress, at the urgent request of the distillers, extended the bonding period to three years. The extending of the bonded period, which was equivalent to the extension of the time for payment of taxes to three years, led to a serious overproduction of spirits, and the distillers found themselves face to face with a grave situation. They saw the bonding period drawing to a close with enormous quantities of surplus spirits on hand on which the tax must be paid. Bankruptcy stared many of the weaker firms in the face, and strong pressure was brought to bear on Congress to

remit hundreds of thousands of dollars of those taxes. Congress, always sensitive about matters of revenue, refused. In 1881, Secretary Windom also refused to stretch his authority to help the distillers out of their trouble. Windom was execrated in every distillery in the nation for his stand. The Internal Revenue Bureau, however, did what it could to assist the stricken manufacturers. On February 13, 1882, John G. Carlisle introduced into the House of Representatives a bill to extend the bonding period of spirits, and to this measure the Internal Revenue Bureau lent the whole weight of its influence. In a report to Congress,* dated April 3, 1882, Green B. Raum, Commissioner of Internal Revenue, recommending the passage of Carlisle's bill, said: "If the manufacturers and owners are required to pay the taxes within three years, I would expect to see such a decline in prices as would seriously embarrass many strong firms, probably cause many failures and unavoidably affect other branches of business without any beneficial results to the government." Congress, however, having in mind the wholesale frauds and stealings of the distillers under the law as it stood, was in no mood to listen to the pleading of the culprits already swelled with the loot of twenty years of manipulation.

What Congress refused, however, was later practically accomplished by a ruling of Hugh McCullough,

* House Report No. 1277, Forty-seventh Congress, First Session.

Secretary of the Treasury. This ruling, dated January 6, 1885, extended the bonding period for seven months. At the same time he requested Congress to extend the bonding period indefinitely, saying:

"The manufacture of whisky is one of the largest and most important branches of domestic industry in the United States, and is at the present time, like other manufacturing interests, greatly suffering from over-production. A legitimate business, from which large revenues are derived, it is not only depressed by over-production, but by being burdened by heavy taxes, the payment of which, as is the case with no other article, is required within a fixed period whatever may be the condition of the market. ..... Under existing laws the manufacturers or holders of whisky are compelled to pay a tax amounting to nearly five times its cost on the article before it is withdrawn from the warehouse for consumption, or to export at great expense, to be held in foreign countries until there is a home demand for it, or to be sold in such countries to the prejudice of our public revenues."

Congress finally relented, and extended various privileges to distillers, including the right to "bottle in bond" (Act of March 3, 1897.) The Act of August 27, 1894, extended the bonding period to eight years, and the business of manufacturing spirits was finally established upon a basis entirely satisfactory to the distilling interests.

The process known as "fortifying" wine is the adding of alcohol in some form for the purpose of increasing its intoxicating qualities. Alcohol was formerly added to apple cider to "prevent acidification." Nominally, this process was to prepare wines and cider for export to tropical countries. But the people devel-

oped a taste for "strong wine," so that now practically all of the wines consumed in the United States, save a few varieties like claret, are heavily "fortified." A glimpse of the situation as to "imitation" wines and fortified goods is to be found in a report of the "United States Revenue Commission on Spirits as a source of Revenue." This report,* prepared by David A. Wells, said:

"For 'the manufacture of imitation wines' the demand for distilled spirits has also, heretofore, been very large; four firms in the city of New York having reported to the Commission a consumption of 225,000 gallons of pure spirits for this purpose during the year 1863. Large quantities of neutral, or pure spirits have also heretofore been used in the United States for the fortifying of cider to prevent or retard acidification, especially for cider intended for export to tropical countries, to the Southern states, or to the Pacific coast. One distiller in Western New York reports to the Commission a regular sale, during the year 1862, of eight thousand gallons of proof spirits per month for this purpose."

This report indicated the tendency of this sort of business at the time that the war tax on spirits was enacted in 1862. This tax was levied indiscriminately on all spirits, and it came to pass that the purchasing of alcohol at about $2.50 to $2.90 per gallon, for the purpose of adulterating or fortifying wine that cost but a few cents per gallon, was an expensive, money-losing proposition. During the era of frauds, late in the sixties and early in the seventies, the wine makers

* Executive Document No. 62, Thirty-ninth Congress, First Session.

got along very well by corrupting Federal Revenue officers, and thus getting alcohol or brandy without paying the whole duty. But the gradual purification of the Revenue service made this more and more difficult. Foreign countries shipped large quantities of fortified wine into the American market, to the detriment of the American wine business. At length Congress was frantically appealed to by California wine makers to come to the rescue of their "infant industry." This appeal was so successful that, in 1890, a law was passed by Congress * allowing wine spirits, or grape brandy, tax free, for the purpose of fortifying sweet wines, in amounts necessary for the preservation of the saccharine matter contained therein. This fortification was to be done under the direct supervision of the Internal Revenue Department, and according to regulations issued by that office. The Act of 1890 limited the proportion of alcohol to be injected into the sweet wines to 14 per cent and in no event was the fortified wine to exceed 24 per cent in alcoholic strength. Prior to the passage of this act, it cost the wine maker about 53 cents in tax alone on the alcohol necessary to fortify one gallon of wine.

The business of fortifying wines at once began to grow by leaps and bounds under the stimulus, and fortified wines began to crowd "light" wines out of the market. The development of this industry can best

* Act of October 1. Some minor amendments were added August 28, 1894.

be told by a tabulation, compiled from the annual reports of the Commissioner of Internal Revenue, showing the brandy used for fortification and the amount of wine manufactured by this process.

Fiscal Year.	Brandy Used (Taxable Gallons).	Fortified Wines produced. (Wine Gallons).	Fiscal Year.	Brandy Used (Taxable Gallons).	Fortified Wines produced. (Wine Gallons).
1891	193,557	1,083,274	1901	2,236,672	9,725,047
1892	695,844	2,746,655	1902	2,408,310	9,880,053
1893	619,811	2,651,187	1903	4,170,365	16,927,860
1894	1,114,515	4,731,050	1904	3,473,446	14,264,718
1895	1,047,001	4,377,230	1905	3,430,819	13,990,055
1896	1,527,692	6,230,562	1906	3,123,748	12,077,573
1897	1,216,480	5,162,392	1907	4,090,774	16,241,900
1898	1,754,509	7,319,329	1908	4,380,016	17,119,261
1899	1,912,339	8,045,052	1909	3,814,129	14,945,871
1900	2,137,067	8,815,441	1910	4,888,445	19,012,397

It soon developed that it cost the government from $25,000 to $30,000 per year in expense for supervision, in order to extend this tax free fortification privilege to the California wine makers. Attention was called to this in the Annual Report of the Commissioner of Internal Revenue for the year 1904, and a recommendation was made that a tax of 25 cents per gallon be levied on brandy used for fortifying purposes, to cover the cost of administration. Commissioner John W. Yerkes repeated this recommendation in his report for 1905, and stated that this cost of administration would reach $50,000 during the coming year. No attention was paid to the recommendation until a new factor appeared. The agitation for free alcohol, denatured for manufacturing purposes, had begun to assume formidable proportions, and legitimate manufacturers, who promoted the measure, were

loudly calling attention to the free grape brandy for fortifying purposes as a precedent. They urged that free alcohol for legitimate manufacturing purposes was a more commendable proposition than was free grape brandy for saloon purposes. This clamor of the manufacturers alarmed the wine men, representatives of whose organization hurried to Washington, where they asked the privilege of paying a tax of three cents per gallon on brandy used in fortifying wines, which three cents was designed to cover the cost of administration. Such an act was passed by Congress, and approved June 7, 1906.*

But in securing this privilege of paying their three cents per gallon tax, and thus escaping the probable infliction of much heavier excise, the wine men secured another item of legislation which they really coveted. The injection of so large a percentage of spirits into wine for fortifying purposes gave the product a strong alcoholic flavor, somewhat at variance with the soft aroma of genuine wines. It was necessary to counteract this by the addition of another adulterant. The Act of June 7, 1906, in addition to providing the tax for administrative purposes, amended the

* The collections from this source since the passage of the law have been as follows:

Fiscal Year.	Collections.
1907	$121,596.00
1908	130,880.00
1909	115,876.00
1910	145,697.25

previous legislation so as to allow the use of sugar and water up to ten per cent. The effect of this was to remove the sharp edge of the added alcohol used in fortifying. This ten per cent of water and sugar, together with the 14 per cent of brandy for fortifying purposes, makes a total of 24 per cent of adulteration specifically provided by law for American wines. *

* European wine countries generally have laws regarding fortification of wine, chiefly allowing fortification for the foreign markets. Swiss wines contain from seven to twelve per cent of alcohol, and are rarely fortified to bring the percentage higher than fifteen per cent. Fortification of wines is allowed, but they must not be sold under false pretenses. Wines are inspected by the regular food inspectors.

Italy has no legislation regarding fortification of wines, and fortification is allowed so long as the product is wholesome. There are penal laws regulating the adulteration of food products.

In France, the law of 1864 allowed fortification of wine in certain exporting ports on the Mediterranean coast. The law of July 24, 1894, repealed the Act of 1864, and absolutely forbids fortification, or "vinage." Exception, however, is made so far as concerns wines intended for exportation, liquor wines and vermouth. These are provided for under special regulations. Alcohol intended for "vinage" of wines meant for exportation is subject to the same duties as any other alcohols. Moreover, fortified wines which show an alcoholic strength higher than fifteen per cent are subject to a double duty on the quantity of alcohol contained up to 21 degrees. Beyond 21 degrees they are liable to pay the duty on pure alcohol for their total volume. (Article 3, Law of September 1, 1871). Exception, however, is made for wine known to contain alcoholic strength of between fifteen and eighteen de-

The adulteration injected into the same wines without specific authorization of law is another, and more intricate, topic—one which has been a subject of concern and legislation since the days of the Roman Empire. * For two thousand years moral suasion, law,

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grees, provided the grower and shipper mention this fact.

In Spain the laws forbid the sale of wine containing more than twelve per cent of alcohol. Alcohol and all liquors are subject to tax. The wines which these countries ship into the American market are practically all heavily fortified for the American taste, while the wines used for home consumption are almost wholly, under the operation of their laws, unfortified. Consequently they contain only about half the percentage of the alcohol in their wines intended for export. This fact, in part, accounts for the lesser amount of drunkenness arising from the use of wine by these people as compared with the United States and other countries, where heavily fortified wines are drunk.

The laws of Russia forbid the fortification of wines imported from foreign countries (Excise law, May 23, 1900) but permits the fortification of wines of Russian production. For this purpose the excise department allows brandy tax free for the purpose of fortifying wines up to an alcoholic strength of 16 per cent.

* Columella, the Roman writer on agriculture, relates the practice of mixing in a specific quantity of must (unfermented wine) ten Sextari of liquid Nemeturican pitch, which had been boiled in sea water, to which was added a pound and a half of turpentine resin. This liquid was allowed to evaporate to two-thirds its bulk, when there was added six pounds of crude pitch, with such aromatic herbs as spikenard, myrrh, saffron, cassia, etc. This treatment was supposed to help in the "fining" of wines, for the same purpose as sulphur is used today. This use of sulphur was also known to the ancients. Pliny **(De Re Rustica, c. 113)** specifies sulphur as one of the substances used by Cato to "fine" his wines.

religion and regulation have failed to eradicate the policy of liquor makers of adulterating their wares. Either the Romans or Normans introduced the art into England. As early as the reign of Edward III (1327-1377) officers were appointed to inspect wines.

All imported wines were inspected twice a year, and those which had been tampered with were destroyed. People having adulterated wines on their premises were sent to the pillory. In 1428 John Ranwell, Mayor of London, ordered adulterated wines seized and poured into the streets. In 1432 Henry VI was presented with a petition praying for relief from these wine doctors. The Sixth Parliament, during the reign of Mary I (1553-1558), was invoked to legislate in the following terms:

"And besyde the samin, sic wynis as are sould in common tavernis ar commonnlie be all tavernaris mixt with auld corrupt winnis and with water, to the greit appeirant danger and seikness of the byaris, and great perrill of the saulis of the sellaris."

Legislation was passed, but the evil continued. During the reign of Charles II (1660-1685), when almost every form of corruption that brought revenue was licensed, Parliament passed a stringent law* against adulterated liquors. The early German laws proscribed adulteration with lime, gypsum,† sulphur or milk, but failed to outlaw adulteration with lead.

* 12th Car. II. c. 25, Section 11.

† Gypsum is much used today in the manufacture of sherry.

In 1696 France prohibited certain adulterations of wine.*

As a matter of courtesy, adulteration of modern wines is usually referred to as "blending," in which process different wines are manipulated, fortified, colored and otherwise treated. Lord Lytton, when Secretary of the British Legation at Lisbon, reported that "all port wines intended for the English market are composed almost quite as much of elderberries as grapes." The Agricultural Council of the Pyrenees Orientales drew the attention of the French Minister of Commerce to the fact that wines imported from Spain were colored with extract of elderberries. A distinguished authority† says that the color of certain port wines is due to the addition of a compound made of one-third spirits, plus two-thirds unfermented grape juice, in which are steeped the skins of dried elderberries. Another standard authority‡ states that this high coloring of port wine is brought about by the use of such coloring matters as elderberry, whortleberry, privet, beet-root, tournesol, log-wood, Brazil-wood, etc. Henderson was doubtless in error as to the use of log-wood, as it has since been proven that log-wood yields this rich color only in alkaline solution. The use of the elderberry skins for the adulteration of port wine

* Henderson; History of Ancient and Modern Wines, p. 339.

† Vizetelly; Facts about Port and Madeira, p. 142.

‡ Henderson; History of Ancient and Modern Wines, p. 341.

is now practically extinct, for the reason that the elder tree has been extirpated from the Alto Douro districts, whence comes port wine. Poke weed (**Phytolacca decandra**) is now largely used, as a substitute for elderberry skins, for coloring port wine. Alcohol has been used for fortifying port wine since early in the eighteenth century. A standard Portuguese work on wines* states that the addition of a half a canada of brandy to every pipe of wine greatly improves it. Mulhall, in his table of percentages of alcohol in various liquors (1886), gives the proportion of spirits in port wine at 23.2 per cent, which is 10 per cent greater than it is possible to produce through any process of fermentation. Among the substances used in adulterating wines are: aloes, alum, ambergris, acetic acid, acetic ether, benzine, brimstone, bitter almonds, bicarbonate of potassium, bisulphate of potassium, Brazil wood, creosote, charcoal, chalk, copperas, catechu, cudbear, cochineal, caustic potash, cognac oil, **cocculus indicus**, elderberry, essence of absinthe, foxglove, fusel oil, glue, glycerine, gypsum, henbane, harthorn shavings, indigo, juniper berries, lime, logwood, litharge, marble dust, muriatic acid, mountain ash berries, nutgalls, opium, oak bark, plaster of Paris, prussic acid, quassia, red saunders-wood, red beet-root, strychnine, sloe leaves, spermaceti, star anise, sulphuric acid, sugar of lead, tansy, turmeric, tannic acid and wormwood. The district in which port wine can be produced com-

* Agricultura das Vinhas, p. 146.

prises only about one hundred and fifty square miles, and during a long series of years the "port wine" imported into England alone has been enormously in excess of all the port wine that is, or can be, produced. * As early as the seventeenth century the scandal regarding adulterated port wine became so great that the Portuguese government gave a monopoly of the traffic in these wines to the Chartered Wine Company of Oporto, a company of philanthropists who undertook to produce and sell only "pure port wines," and conduct the traffic on a "high moral basis." The philanthropists, however, in order to meet the demand for "pure port wine," soon began launching upon the market bogus wines themselves, and eventually the corporation went to pieces.

The adulteration of beer has been the subject of various inquiries by the British Parliament, but until recent years the adulteration of liquors has had but little attention in the United States. In 1890 the House of Representatives considered the Turner Bill, a proposal to prevent adulteration of beer. This was defeated by the brewing interests, which wished to "avail itself of the discoveries of science." In 1899

* Owing to the richness of taste and color, port wine has been very popular for ecclesiastical purposes among the few religious bodies which still use fermented wine for communion purposes. A little investigation of the character of the port wine of commerce would doubtless lead such bodies to adopt for communion purposes a wine that was at least made out of grapes.

the Senate authorized the Committee on Manufactures "to conduct a recess investigation on the subject of food adulteration in the United States." The investigations led the committee, chiefly, into the adulteration of whisky, in which it was developed that most of the whisky on the American market was either "doctored," or absolutely bogus. The most common method of manufacturing whisky was by the use of Cologne spirits, or neutral spirits as a base, and the addition of burnt sugar, ethers of the organic acids, and an essential oil to give it the proper bead. The investigation by this committee, and the corresponding labors in the House, led to the introduction of bills on the subject, but Congress was so bewildered with the problem that it only passed a law regulating the adulteration of butter. The Fifty-Seventh Congress did better, and considered "An act for preventing the adulteration, misbranding and imitation of food, beverages," etc. The Senate Committee in its report accompanying the bill stated that "almost any brand of wine can be drawn from the same tank, and priced in the market according to the value of the wine it is colored to imitate." This agitation for a pure food law was initiated by the National Pure Food and Drug Congress which met in Washington in 1899 and 1900. Representatives of this organization kept up the agitation, which finally resulted in the passage by Congress of the law approved June 30, 1906, "An act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious

foods, drugs, medicines, and liquors." Regulations (Circular No. 21.) were promulgated October 17, 1906, to carry out the provisions of this act.*

The use of alcohol for industrial purposes is another problem which was developed by the artificial system of an internal revenue tax. Manifestly, a legitimate industry is unable to pay a tax of $2 upon an article the original cost of which ranges from ten to twenty cents. The tax of $1.10 on proof spirits amounts to a tax of about $2.09 on commercial alcohol, that product consisting of about 95 per cent of pure alcohol, and five per cent water. At the time of the breaking out of the Civil War the industrial use of alcohol was in its infancy, and the levying of this tax upon the spirits while not interfering, apparently, with the beverage traffic, practically wiped out the use of alcohol in the industries. The infliction of this tariff created an urgent demand for a substitute for alcohol for manufacturing purposes. Mineral naphtha was used, chiefly, for a time. Finally, a method was discovered by which wood naphtha could be cheaply rectified, the product being methyl alcohol, commercially known as wood alcohol. Wood naphtha had been formerly a mere by-product of the manufacture of charcoal. Having no commercial value, it had escaped taxation under the war tax of 1862. Subsequently, for

* These regulations were approved by Leslie M. Shaw, Secretary of the Treasury; James Wilson, Secretary of Agriculture; and Victor H. Metcalf, Secretary of Commerce and Labor.

special purposes, the chemists devised methods for the more perfect rectification of wood naphtha, these products being known as "Columbian Spirits," "Eagle Spirits," and "Lion D'Or," the latter being the highest product of that class. By taste or smell it could not be distinguished from ethyl, or grain alcohol. But to produce even commercial wood alcohol cost two or three times as much as the cost of manufacturing grain alcohol.

Late in the eighties certain manufacturing interests conducted an agitation for the removal of the tax upon alcohol for commercial purposes. This agitation was conducted chiefly by large manufacturers of patent medicines, many of which were spirituous preparations, used for beverage purposes. The proposal to remove the tax on alcohol for commercial purposes was so drafted as to turn loose upon the market tax-free alcohol for these medicines. Such a proposal naturally created much opposition, and the attempt failed. Prior to the Spanish War legitimate manufacturers banded themselves together to secure tax-free alcohol for useful and necessary manufacturing purposes. The breaking out of the war with Spain, however, caused the temporary abandonment of this agitation. It was renewed with great vigor in 1895. This time the proposal was placed upon the same basis as that on which tax-free alcohol rests in Germany, France and England. The release from taxation was asked only on alcohol which had been denatured, or so chemically treated as to unfit it for beverage purposes. This agi-

tation resulted in the Act of Congress approved June 7, 1906, which provides for the withdrawal from bond, tax-free, of domestic alcohol, when rendered unfit for beverage, or internal medicinal uses, by the admixture of suitable denaturing material.*

Regulations of an elaborate character were published and approved September 29, 1906. Two classes of denatured alcohol were provided for; the first styled "completely denatured," intended for general use, and without limiting regulations as against the private consumer. The second class, or "specially denatured" alcohol, was provided for the needs of certain manufacturing interests, for whose uses the completely denatured alcohol was unfitted. Such alcohol could be used only with such limitations as were prescribed by the Secretary of the Treasury. A supplemental Act, approved March 2, 1907, which went into effect September 1, 1907, elaborated and perfected the original law.

* The law provides: "From and after January 1, 1907, domestic alcohol of such degree of proof as may be prescribed by the Commissioner of Internal Revenue, and approved by the Secretary of the Treasury, may be withdrawn from bond without the payment of internal revenue tax, for use in the arts and industries, and for fuel, light, and power, provided said alcohol shall have been mixed in the presence and under the direction of an authorized government officer, after withdrawal from the distillery warehouse, with methyl alcohol or other denaturing material or materials, or admixture of the same, suitable to the use for which the alcohol is withdrawn, but which destroys its character as a beverage, and renders it unfit for liquid medicinal purposes."

The extent to which denatured alcohol is used is something of a disappointment to some of the most enthusiastic advocates of the removal of the tax. It has not yet reached the proportions officially predicted in 1882.* Yet the growth in the use of this article in the arts has been rapid. During the fiscal year 1909, 1,137 manufacturers were making use of it and 17,176 dealers were selling it. The following tabulation shows the activities of the traffic since the enactment of the law:

DENATURED ALCOHOL PRODUCED IN THE UNITED STATES.

Year Ending June 30.	Completely Denatured.	Specially Denatured.	Total.
1907*	1,397,861	382,415	1,780,276
1908	1,812,122	1,509,329	3,321,451
1909	2,370,839	2,185,579	4,556,418
1910	3,076,924	2,185,579	5,262,503

*Six months.

The use of denatured alcohol was somewhat checked, when the law went into effect, in January, 1907, by the action of the wood alcohol trust in dropping the price of its product from seventy to forty cents per gallon, the then selling price of denatured alcohol. This change in the policy of the government drew a sharp line between alcohol intended for a legitimate manufacturing purpose and alcohol designed for saloon or beverage purposes.

The relations of drug stores to the Federal government are confined to operations under the Pure

* Report of Commissioner of Internal Revenue for 1882, pp. CXXVII-VIII. This estimate was 7,367,594 gallons.

Food and Drug Act, as mentioned above, and also to liability to the payment of the special tax as "retail liquor dealers" under certain circumstances. By the provisions of Section 3246, Revised Statutes of the United States, a druggist is permitted to keep spirits and wines and use them in combination with other drugs, in the preparation of medicines that are not beverages, and to sell such medicines without paying the special tax as a liquor dealer. But under the uniform ruling of the Internal Revenue Department and the decisions of the United States courts a druggist cannot, without subjecting himself to this special tax, sell such spirits or wines as are not combined with drugs or materials which take them out of the class of beverages, even when he sells such liquors on physicians' prescriptions and for medicinal use only. In a circular dated January 20, 1890 (Circular No. 340), ruling * upon this point, the Internal Revenue Bureau made the following observation:

"As to the compounds called "bitters," "tonics," and the like, the rule is, that, if they are composed of spirits in combination with drugs, herbs, roots, etc., and are held out as remedies for diseases stated in labels on the bottles, they are to be regarded as medicines until the facts ascertained as to the purposes for which they are usually sold or used show them to be beverages; and, until such facts are obtained, druggists and merchants who sell these compounds in good faith as medicines only are not to be called on to pay special tax as liquor dealers on account of such sales. Every person

* See also Circular No. 608, Treasury Decisions, Vol. IV, p. 210.

who sells them as beverages, either by the bottle or by the drink, or sells them knowingly to those who buy them for use as beverages, involves himself in liability to criminal prosecution under the internal-revenue laws of the United States, unless he holds a special tax as a liquor dealer covering such sales."

The essence of this is that any druggist can sell or compound any legitimate prescription or medicine containing alcohol, without paying this special tax as a retail liquor dealer. He cannot, however, fill a prescription for a bottle of whisky or a case of beer without paying this tax. The latter variety of business is the province of a saloon.

So far as the legitimate druggist is concerned, there was no difficulty over the application of the spirit of this ruling. But all druggists are not of immaculate probity, and various decoctions were prepared nominally medicines, but actually beverages, which were sold in both prohibition and license territory, under the protection, or rather in spite, of Section 3246,* (Revised Statutes), which, in effect, declares it to be unnecessary to pay the special tax for the conduct of any legitimate drug business. This abuse became so flagrant that in 1905, the Internal Revenue Department began dealing with the subject in a series of Circular

* The exempting clause of this section reads: "Nor shall any special tax be imposed upon apothecaries as to wines and spirituous liquors which they use exclusively in the preparation or making up of medicines."

instructions to Collectors. In the first of these (Circular No. 673) the Department held:

"It is held that the statute requires the exaction of this special tax from the manufacturer of every compound composed of distilled spirits, even though drugs are declared to have been added thereto, when their presence is not discoverable by chemical analysis or it is found that the quantity of drugs in the preparation is so small as to have no appreciable effect on the alcoholic liquor of which the compound is mainly or largely composed.

"The same ruling applies to every alcoholic compound labeled as a remedy for diseases and containing, in addition to distilled spirits, only substances or ingredients which, however large their quantity, are not of a character to impart any medicinal quality to the compound; but where substances undoubtedly medicinal in their character are combined with whisky or other alcoholic liquor and are used in sufficient quantity to give a medicinal quality to the liquor other than that which it may inherently possess, such compound is, of course, not to be included in this ruling.

"The question, in each case, arising under the terms of this circular will be determined by this office, not merely upon examination of the formula submitted by the manufacturer of the compound, but upon results of the analysis made in the chemical laboratory here of samples obtained in the open market and sent in by the local internal revenue officers and agents."

Druggists were given until December 1, 1905, to adjust affairs to this ruling. Under the practice of the Departments each concoction was required to stand on its own merits. Later, circulars (Nos. 676, 713) and numerous bulletins were issued, placing various compounds which had been analyzed upon the list of those for the sale of which the special tax was required. The

holding of the Department in reference to those spurious medicines was further elaborated by the Department in 1907.* Describing these beverages, Commissioner Capers said:

"First, there is a class of preparations held out as medicines by the manufacturers, but which are in fact intended to be sold and consumed as beverages, and which are really nothing but alcoholic beverages. Such preparations are usually manufactured for sale in localities where for some reason spirituous liquors cannot be legally sold.

"Second, there is a class of preparations which are really medicines and which are often used as such, but which contain alcohol considerably in excess of what is necessary to hold in solution or preserve the medicinal ingredients. Such preparations fall within the category of beverages as known to the internal revenue laws, no matter how they may be sold or used.

"Third, there is a class of preparations containing no more alcohol than is necessary to hold the medicinal agents in solution. These are usually sold as medicines, but they are sometimes sold and consumed as beverages. They properly fall within the classification of medicines."

His holding regarding these classes of compounds described was:

"Manufacturers of the first two classes are liable as rectifiers (or brewers, in the case of malt liquors) and persons selling the preparations are liable as liquor or malt-liquor dealers. The question of good faith on the part of the dealer is not an element to be considered.

"There are several tests whereby the character of the first class of preparations can be fixed. For instance, if the

* Circular No. 707; Treasury Decision 1251, Oct. 12, 1907.

compound contains alcohol considerably in excess of what is necessary to preserve any medicinal agents claimed to be used, if the drugs used are in such small quantities as to give the preparation little therapeutic value, if in the manufacture of the preparation ingredients whose special office is to render it potable are employed, if the preparation is largely sold in localities where prohibition laws operate, if it is sold at places where beverages are usually dispensed, or if the preparation is generally purchased by persons under such circumstances and in such quantities as to indicate that it is consumed as a beverage, then in either event it is held by this office that the preparation is a beverage and special tax liability accrues without any reference as to the character of particular sales. Investigating officers will in such cases simply secure legal evidence that the party being investigated has sold a preparation known to be, or shown to come, within this class. This applies likewise to preparations of the second class.

"In the case of the third class of preparations it is held that the seller is not subject to special-tax liability unless legal evidence that the goods purchased were consumed as a beverage is obtained, and that the sales were made under such circumstances as to put the dealer on notice of the purpose for which they were purchased.

Under the unbroken line of departmental rulings and decisions of the courts since 1890, it is absolutely unnecessary for any druggist to pay the special tax as a retail liquor dealer, in order to conduct a legitimate drug business. Only a very few standard patent medicines have been ruled as being of such a character as to require the payment of this special tax for their sale, and the manufacturers thereof have so mod-

ified their formulae as to come within the law. * There are, however, a large number of quack preparations designed wholly for beverage purposes which have been placed under the ban by the Department. A circular dated June 1, 1909 (T. D. 1505) gives a list of 163 such compounds.

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* The so-called two per cent beers, which are sold so extensively in Prohibition territory, are not exempt from the excise. The holding of the Department is that any fermented beverage made from malt or a substitute for malt, and containing as much as one-half of one per cent of alcohol, measured by volume, is subject to the payment of the excise tax by the brewers, and retailers thereof are compelled to pay the tax as "retail malt liquor dealers." The payment of the beer tax on these two per cent beers accounts, in part, for the statistical increase in the consumption of liquors, as all beverages which pay this tax are classed as "malt liquors."

The Army and Navy.

CHAPTER V.

In the history of the military and naval affairs of the country, drink has ever been a factor to be reckoned with. Drunkenness when on duty has always been severely punished. As to the attitude of the Government toward the supply of intoxicants, three policies have been thoroughly tested in decades of experience, and all have been thrown upon the scrap heap of the past with the flint-lock firearms and wooden men-of-war. The first of these policies was the furnishing of a spirit ration by the Government itself on the theory that a limited amount of alcohol was beneficial to the soldier and that it was best for it to be supplied directly by the Government as a component part of the ration. After a half century of experience with this policy, it was abandoned for the reason that it was a failure. Then followed a half century or so of the sutler system, in which a semi-official contractor supplied liquor, with other goods, under strict Government supervision. This policy failed, and was also discarded. The next plan was the co-operative saloon, conducted by the soldiers themselves, but under strict military regulations which limited sales to "light wine

and beer," the profits going to the company mess fund to supply articles of diet not furnished by the commissary. This plan was put to the test of fifteen years' actual experience, and was also discarded as a failure.

The Continental army was on a spirit ration basis, but the ration was varied because it was fixed partly by the various colonies themselves.* The Pennsylvania Assembly, April 4, 1776, fixed the ration for Pennsylvania troops at one quart of small beer, per

* The troubles that beset the revolutionists, through the whisky peddlers, is evidenced from an order taken from the Orderly Book of Captain William Cort's company, camped at Cambridge, Mass., under date of June 14, 1775: "See that all tumults & Differences In Camp be Suppressed, that all soldiers repaire to there Barracks and Tents after the Beating of the Tato on penalty of being Confined, that there Be no Noise in camp after nine o'clock at Night, that the Field officers of the day take Especial Care to prevent all grogge shops and if the owners of them Continue to sell Liquors to the Soldiers he be ordered to Stave all there Licquers."—Conn. Hist. Soc. Collections, Vol. VII, p. 20.

On July 11 of the same year, Lieut. Col. Ward, President of the Court Martial, issued the following: "Notwithstanding the orders of the Provential Congress, some persons are so Dairing as to supply the Soldiers with Immoderate quantitys of Rum & other Speiratus Licquers, any Seller, tavern keeper or Lisanced Inholder who Shall Presume, after the date of this order to Sell to Any Non Commissioned officer or Soldir, Any Speritus Licquers whatever without an order in Writing from the Capt of the Company to Which Such Noncommissioned officer or Soldier Belongs, he or they So offending May Expect to be Severely punished."—Ibid, p. 44.

man, per day. On February 1, 1776, the Maryland Council of Safety fixed the ration for Maryland troops at one-half pint of rum per man per day and discretionary allowances for particular occasions. On November 4, 1775, the Continental Congress fixed the army ration at "one quart of spruce beer or cyder" per day* and, on Novemer 28, fixed the rations for the Navy at a half pint of rum per man and discretionary allowances when on extra duty or in time of engagement.† But the liquor ration was supplemented by the army sutler, who sold to all who had the price. The rule governing such sales was continued in Section VIII, Article 1 of the rules and regulations for the government of the army adopted by Congress September 20, 1776. The rule was:

"No sutler shall be permitted to sell any kind of liquors or victuals or keep their houses or shops open, for the entertainment of soldiers, after nine at night, or before the beating of the reveilles, or upon Sundays, during divine service, or sermon, on the penalty of being dismissed from all future suttling." ‡

The spirit ration and the sutler combined did not appear to "keep the soldier out of the outside resorts," for we find General Washington issuing orders at Cambridge, Massachusetts, March 25, 1776, which read, in part, "All officers of the Continental Army are enjoined to assist the civil magistrates in the execu-

* Journal Continental Congress, Vol. III, p. 322.

† Ibid, p. 383.

‡ Journal of the Continental Congress, Vol. V, p. 794; Cross, Military Laws of the U. S., p. 18.

tion of their duty, and to promote peace and good order. They are to prevent, as much as possible, the soldiers from frequenting tippling houses." The Continental hospital regulations, promulgated in July, 1776, provided a corporal's guard "to prevent the sick from leaving the hospital without permission from the surgeon, and to keep persons from going in, without orders, to disturb the sick, or carry liquor to them."* So far from the spirit ration and the sutler system, under strict military regulations, solving the troubles due to drink, it was necessary to place a corporal's guard to keep the whisky peddlers out of the military hospitals.†

The Act of Congress, approved April 30, 1790, one year after the War Department was established, provided the following ration for the army:

"And be it further enacted: That every non-commissioned officer, private and musician, aforesaid, shall receive daily the following rations of provisions, or the value thereof: One pound of beef, or three-quarters of a pound of pork, one pound of bread or flour, half a gill of rum, brandy or whisky, or the value thereof, at the contract price where the same becomes due, and at the rate of one quart of salt, two quarts

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* American Archives, Fifth Series, Vol. I, p. 109.

† Alibigence Waldo, Surgeon in the Continental Army, kept a diary during that winter at Valley Forge, 1777-78. The entry for Dec. 8 read: "All at our Several Posts. Provisions and Whisky very scarce. Were Soldiers to have plenty of Food and Rum, I believe they would storm Tophet."—Hist. Mag. Vol. V, p. 130.

of vinegar, two pounds of soap, and one pound of candles, to every hundred rations."*

The Act of May 30, 1796, made no change in the spirit ration save to take away from the soldier the right to commute the same. He had to take the rum ration or nothing in its place.† The army organization Act of March 3, 1799, eliminated the spirit ration except as to those soldiers who were allowed this by the terms of their enlistments, but the same Act authorized commanding officers to issue a ration not exceeding one-half gill of spirit per day and more in case of fatigue, service or on "other extraordinary occasions."‡

Three years later, however, (Act of March 16, 1802) Congress not only restored spirits as a component part of the ration, but doubled the amount, making it a gill instead of half a gill as heretofore.§

About this period, a new factor appeared in the situation. Thomas Jefferson had been elected president and one of his favorite ideas was to encourage the use of light wines and beer in place of spirituous

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* Cross, Military Laws of the U. S., p. 43; Callan, Military Laws of the U. S., p. 89.

† Cross; p. 64.

‡ Cross; p. 94.

§ Cross, p. 101; Callan, p. 144.

liquors.* John Adams had also acquired considerable reputation for "fanaticism" on account of his strenuous opposition to "taverns" and spirit drinking at his home at Braintree (Quincy), Massachusetts. While opposed to spirits, Adams was friendly to cider. Reflecting these ideas, Congress, in 1804 (Act of March 26), authorized "That an equivalent in malt liquor, or low wines, may be supplied the troops of the United States, instead of rum, whisky or brandy, which by the said Act is made a component part of the ration, at such posts and garrisons, and at such seasons of the year, as, in the opinion of the President of the United States, may be necessary for the preservation of their health."†

The Second War with England (1812-14) passed into history with no further changes in the spirit ration. But in this period the evidences multiplied as

* Mr. Jefferson well expressed his attitude in this matter in a letter written to Thomas Yancy, in 1815, in which he said: "There is before the Assembly (Virginia) a petition of Captain Miller, which I have at heart, because I have great esteem for the petitioner as an honest and useful man. He is about to settle in our country, and to establish a brewery, in which art I think he is as skillful a man as ever came to America. I wish to see this beverage become common instead of the whisky which kills one-third of our citizens, and ruins their families. He is staying with me until he can fix himself, and I shall be thankful for information from time to time of the progress of his petition."—Writings of Thomas Jefferson, Ford Ed., Vol. X, p. 2.

† Cross, p. 107; Callan, p. 170.

to its unsatisfactory character. John C. Calhoun, a member of the Foreign Relations Committee of the House of Representatives, had much to do with instigating this conflict, and, two years after its close, he was called into the Cabinet as President Monroe's Secretary of War. It was in this capacity that Calhoun made a record that first brought him lasting fame. He re-organized the War Department from the bottom up, eliminated a multitude of abuses and reduced the expenses of the Department from $481 to $287 per man. One of the first things that came under his observation was the policy of the spirit ration, a policy that he was led to oppose after investigating its results. In the year 1818, Congress authorized (Act approved April 14) the President to "make such alterations in the component parts of the ration as due regard to the health and comfort of the army and economy may require."* Calhoun lost no time in calling for a report from the Surgeon General as to the propriety of furnishing a substitute for the spirit ration. The report was finally forthcoming,† but its purport was averse to any change in the spirit ration. So the ration of a gill a day per man remained for the time being.

* Cross, p. 202. This Act was for a period of five years only. It was renewed for a like period in 1823 and again in 1829, and made permanent March 3, 1835.

† Report Surgeon General Joseph Lovell to the Sec. of War, Jan. 26, 1829. Ex. Papers, 20th Congress, 2d Session, Doc. No. 103.

Eighteen months later, Mr. Calhoun made another attempt to carry his anti-spirit ration ideas into effect. On August 10, 1820, George Gibson, Commissary General of Subsistence, sent out to all assistant commissary generals a circular letter in which he stated that it was his own wish and also that of Mr. Calhoun, the Secretary of War, to dispense with the spirit ration, and offered troops the contract price thereof in money.* The proposal was accepted by a few posts, but the plan shortly fell into disuse. Mr. Calhoun's attention became absorbed in other contests over public matters, and a temperance career was nipped in the bud. The spirit ration continued to thrive and make soldiers drunk.

The next assault made on the spirit ration was that of John H. Eaton, Secretary of War and personal friend of President Jackson. Eaton was a strong friend of the temperance movement, then assuming considerable proportions, and when he entered Mr. Jackson's† Cabinet, in 1829, the spirit ration was scheduled for trouble. In a report made to Congress in February, 1830, Secretary Eaton made a savage

* State Papers, 21st Congress, 1st Session, Doc. 22.

† While in his youth, General Jackson had sowed a considerable quantity of wild oats, yet in his mature years he was a strong friend of the temperance cause. He was conspicuous in his efforts to abolish the spirit ration, and banished all intoxicating liquors from the White House levees.—See Journal American Temperance Union, July, 1845; Parton, Life of Andrew Jackson; Rumple, Hist. Rowan Co., N. C., p. 294.

attack upon the spirit ration of the army, recommending its abolition. He presented the following statistics of desertion during the previous seven years, and stated that nearly all of those who deserted in 1829 did so through drink. He also presented a formidable array of reports from army chiefs advocating the discontinuance of the spirit ration.*

* See, State Papers, 21st Congress, 1st session, Doc. No. 22, Alexander Macomb, Major General, commanding the army said: ....."It is certain that nothing has tended so much to degrade the rank and file of the army as the excessive use of ardent spirit; nor has it been less destructive to their health and discipline. Any plan, therefore, that can be devised that will be likely to eradicate the evil, is worthy of the trial. In accordance with the tenor of the resolution (of Congress), I would suggest that the rations of liquor now furnished to the troops be discontinued, and, in lieu thereof, a portion of rice and molasses be issued; and, further, that a bounty of one dollar a month, to each non-commissioned officer, musician, artificer and private soldier, be paid at the expiration of his term of service, on producing a certificate, from his commanding officer, of total abstinence from the use of ardent spirits, declaring at the same time, that he has conducted himself in an orderly manner during the term of his enlistment."

Adjutant-General Jones said: "Ardent spirits should be discontinued in the army, as a part of the daily rations. I know from observation and experience, when in command of troops, the pernicious effects arising from the practice of regular daily issues of whisky. If the recruit joins the service with an unvitiated taste, which is not infrequently the case, the daily privilege and the uniform example soon induce him to taste, and then to drink his allowance. The habit being

DESERTIONS FROM THE ARMY IN SEVEN YEARS.

Year.	Number.	Tried by Court-Martial.
1823	668	1,093
1824	811	1,175
1825	803	1,208
1826	636	1,115
1827	848	991
1828	820	1,476
1829	1,083	
Total	5,669	7,058

A total of 1,083 arrests out of an army of only about 6,000 was, indeed, an alarming showing. Congress, however, was slow. Both the President and his war secretary were men of action. Mr. Eaton, under authority of President Jackson, on November 30, 1830,

acquired, he, too, soon becomes an habitual toper."

Major-General Gaines said: "The proceedings of court martial are alone sufficient to prove that the crime of intoxication almost always precedes, and is often the immediate cause of desertion. And I am, moreover, convinced that most of the soldiers, who enter the army as sober men, acquire habits of intemperance principally by falling into the practice of drinking their gill, or half a gill, of whisky every morning. I have known sober recruits who would often throw away their morning allowance, but whose constant intercourse with tipplers would soon induce them to taste a little, and in time, a little more, until they became habitual drunkards. I am therefore decidedly of the opinion that the whisky part of the ration does, slowly but surely, lead men into these intemperate and vicious habits, out of which grow desertions and most other crimes."

issued a department order discontinuing the regular spirit ration and making rules for the government of sutlers in selling spirits to the troops. The following is the text of this order:

"1. Upon official statements of Generals, Inspector Generals and commanders of regiments and companies, confirmed by the reports of the medical staff, representing that the habitual use of ardent spirits by the troops has a pernicious effect upon their health, morals and discipline, it is hereby directed that after the promulgation of this order at the several military posts and stations, the Commissaries will cease to issue ardent spirits as a part of the daily ration of the soldier. An allowance of money in lieu thereof will be made by the Subsistence Department, computing the value of the ration of whisky at the contract price at the place of delivery. This regulation is not to be construed so as to interfere with the act of Congress of the 2d of March, 1819, regulating the pay of the army when employed on fatigue duty, but all issues on such occasions may be commuted for money at the contract price, at the option of the soldier.

"2. Sutlers are prohibited from selling to any soldier a greater quantity than two gills of ardent spirits a day, and that or any less quantity is to be issued only on the written permission of his commanding officer, who will exercise a sound discretion in reference thereto.

"3. No liquor shall be sold or issued before noon, and when procured of the sutler the soldier shall pay in cash therefor at the time of delivery.

"4. The practice of advancing and of issuing due bills representing money, by sutlers or others connected with the army, to soldiers, having been found detrimental to the interests of the service, is hereby prohibited.

"5. Any sutler who shall offend in any of the above particulars, or who shall receive due bills for any article

sold by him to the soldiers, shall forfeit his appointment on satisfactory proof thereof being furnished."

In 1831, General Lewis Cass succeeded Mr. Eaton as Secretary of War. Mr. Cass was prominent in the temperance agitation of his time and carried out the policy of his predecessor in regard to the spirit ration. He strengthened Secretary Eaton's order by absolutely forbidding the sale of spirits by sutlers and substituting coffee in lieu of spirits in the regular ration.*

* The following is an extract from this order (dated Nov. 2, 1832.):

"1. Hereafter no ardent spirits will be issued to troops of the United States, as a component part of the ration, nor shall any commutation therefor be paid to them.

"2. No ardent spirits will be introduced into any fort, camp, or garrison of the United States, nor sold by any sutler to the troops. Nor will any permit be granted for the purchase of ardent spirits.

"Under the authority vested in the President by the 8th section of the act of Congress of April 14th, 1818, the following changes will be made in the ration issued to the Army:

"3. As a substitute for the ardent spirits issued previously to the adoption of the general regulation of November 30th, 1830, and for the commutation in money prescribed thereby, eight pounds of sugar and four pounds of coffee will be allowed to every one hundred rations. And at those posts where the troops may prefer it, ten pounds of rice may be issued to every hundred rations, in lieu of the eight quarts of beans allowed by the existing regulations.

"4. These regulations will not extend to the cases provided for by the act of Congress of March 2d, 1819, entitled "An Act to regulate the pay of the Army when employed on fatigue duty," in which no discretionary authority is vested in the President, nor to the necessary supplies for the Hospital Department of the Army."

The matter of the fatigue ration and the ration for "extraordinary occasions" was not within executive discretion.

The next attack made was on the fatigue ration, and this attack came from within the ranks of the army. Many officers and soldiers petitioned Congress to abolish the fatigue ration. * The result of this agitation was that Congress, in the Act of July 5, 1838, substituted coffee "in lieu of spirit or whisky"† and the army spirit ration in the United States Army closed its career. Its abolition was brought about chiefly through the agitation within the army itself. It was abolished simply because, after a half century of experience, it was found that temperance and good order in the army could not be maintained by furnishing free drinks to the soldiers at government expense. The

* Daniel Webster, the Senator from Massachusetts, in presenting and asking leave to print one of these petitions, said, that he had "particular pleasure in presenting the memorial of certain officers of the army, praying Congress to repeal a part of the law which allows whisky to soldiers on fatigue duty. These persons, most competent certainly to judge, are of opinion that this allowance should be discontinued. They think the substitute provided for other cases, would be most usefully applied to this also. So decisive a testimonial in favor of the great cause of Temperance, ought to have much weight. If ardent spirits may be beneficially and usefully dispensed with by soldiers on fatigue duty, it would be difficult to maintain the necessity of their use by persons in any occupation or employment."—Report American Temperance Union, 1838.

† Callan, p. 346.

spirit ration had been the plague of the War of the Revolution. It had balked and defeated the efforts of the soldiers in the second War with England, and General Winfield Scott himself* is authority for the statement that fifty per cent of all his losses in the Mexican War came from this source.

The lack of vigilance of officers in dealing with sutlers called forth an order from Secretary of War George W. Crawford, dated September 21, 1849, forbidding sutlers from selling "ardent spirits or other intoxicating drinks, under penalty of losing their situations." This order was issued at a time when the temperance propaganda was at high tide and when the demand for absolute prohibition of the beverage liquor traffic began assuming extensive proportions. But at the breaking out of the Civil War both temperance and prohibition affairs were swallowed up in the struggle. While the public attention was taken up in these great national issues the whisky peddler lurked at home, poisoning the laws of his state, and in the environs of army camps, defeating his country's arms. In this confusion of the hour the "fatigue" ration crept back into army practice. The Revised Army Regulations, issued by Secretary of War Simon Cameron, August 10, 1861, provided a ration of "one gill [whisky] per man daily, in case of excessive fatigue, or severe exposure." But the same influences and causes which brought about this concession of a "fatigue ra-

* Marsh, Temperance Recollections, pp. 337-8.

tion" operated to make the same "fatigue ration" mean whatever any regimental commander wished to have it mean. To many it meant the issuing of a drink to a soldier every time that he felt tired, and the bibulous soldier would suddenly become stricken with "excessive fatigue" every time he wanted a drink. In much of the army the "excessive fatigue" ration became like any other ration. The law was also stretched to allow the sutler to peddle liquor and a period of demoralization set in. Such a period of confusion is always attendant upon the rapid mobilization of large forces of undisciplined volunteers, but the injection of whisky, especially through regular army channels of supply, vastly augments the natural troubles. In the opening days of the war the troubles growing out of drink in the army attracted wide interest. The first disaster to the Union army, that of Bull Run, was credited largely to the account of drunkenness on the part of an army officer high in command on the Northern side. The scandal was aired on the floor of Congress. Senator Pomeroy, of Kansas, voiced the popular sentiment on the floor of the Senate, when he declared:

"In ordinary years, it was calculated that 30,000 went down to the grave, the home of the drunkard, but it would not be too much to double that number each year since the war began. For the vice of intemperance has followed the army, has visited the quarters of both officer and private, has taken down some of the bravest and truest of the land, who, before, had always stood erect in their manhood and their pride. It has made disorderly and riotous the loyal camp of

the soldier, has made disgraceful the tent of the officer, and, on more than one occasion, defeated and demoralized an army on the field of battle. Of the thirty thousand victims of disease and death attending on the Peninsular campaign, the last year, at least ten thousand may be set down as chargeable to the daily ration of whisky and quinine."*

Major General McClellan himself, Commander in Chief of the Union Army, in reviewing a court-martial of an officer who had been convicted of drunkenness, declared, "Would all the officers unite in setting the soldiers an example of total abstinence from intoxicating drinks, it would be equal to an addition of 50,000 to the armies of the United States." † Congress took quick action. A joint resolution was hurried through both houses that any officer found guilty of habitual drunkenness should be immediately dismissed from the service. ‡

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* Marsh: Recollections, pp. 337-8.

† Marsh: Recollections, p. 335.

‡ The following, General Orders No. 11, issued from the Headquarters of the Middle Department, indicates the acuteness of the situation:

"Baltimore, Md., Apr. 16, 1862.

"———— The Commanding General cannot pass by this court without a few words of admonition to the officers under his command. Two commissioned officers have been found guilty of drunkenness by this court, and dismissed the service, and not a court-martial is held without having such cases before it; every sentence in these cases, however severe, will be carried out with the utmost rigor.

"Drunkenness is the bane of the military profession; it has gained a strong foothold in the commissioned grades,

The Act of March 19, 1862, "An Act to provide for the appointment of sutlers in the volunteer service," made the inspectors general a board of officers to prepare a list of articles to be sold by sutlers, and contained the following clause—"Provided always, that no intoxicating liquors shall at any time be contained therein, or the sale of such liquors be in any way authorized by said board." *

General McClellan, on June 19, of the same year, issued an order for the immediate discontinuance of the spirit ration, and that hot coffee be served immediately

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and the Commanding General is constrained to believe that it is to be traced in some instances to the bad example which the older officers set to the younger by drinking in their presence, and inviting them to drink in their tents and quarters at all hours of the day. Moreover, the influence of these examples upon the non-commissioned officers and privates is pernicious in the extreme. Nine-tenths of all the crimes and offences for which officers and soldiers are brought to trial, are the fruits of this degrading and ungentlemanly vice; and the Commanding General earnestly appeals to the officers under his command in the name of the honorable profession at arms, which it is their duty to preserve from all taint, and in the name of the distracted country in whose service they are imperiling their lives to banish from their encampments and quarters all intoxicating liquors, which add no vigor either to their mental or physical powers, and which are a certain source of demoralization, and often of indelible disgrace.———

"By command of Major General Dix.

[Official.]

D. T. Van Buren, Asst. Adjt. General.

* Callan, p. 496.

after reveille. To General Benjamin F. Butler, however, belonged the honor of first interdicting the presence in camp of any intoxicating liquor whatever, and renouncing all use of it in his own quarters. In his general order on the subject he declared that, as he desired never to ask either officers or men to undergo any privations which he would not share with them, he would not exempt himself from the operation of the order, but would not use liquor in his own quarters, as he would discourage its use in the quarters of any officer.* General Banks, General Hooker, General Ewell and Colonel Ellsworth,† who was killed early in the struggle, made vigorous war on drink.

During the first year of the conflict the War Department refused to allow temperance documents to be distributed through official channels. This attitude, however, was reversed in 1863, and a million copies of an address prepared by E. C. Delaven of New York, and endorsed by such men as General Winfield Scott and General Dix, were distributed among the troops through the army posts.

The office of sutler was finally abolished by the Act approved July 28, 1866. In this same Act the subsistence department of the army was established, which has since been the channel through which supplies

* Marsh, p. 335.

† Ellsworth was exceedingly popular and, after his death, "The Ellsworth Pledge" was circulated among soldiers and extensively signed by them.

have been distributed to the troops. This Act was modified by the joint resolution of March 30, 1867, which authorized traders to remain at certain army posts. This resolution was re-enacted July 15, 1870, in a form by which the Secretary of War was "authorized to permit one or more trading posts to be established and maintained at any military post on the frontier not in the vicinity of any city or town, when he believed such an establishment is needed for the accommodation of emigrants, freighters, or other citizens." It was never authoritatively determined whether or not the Act of March 19, 1862, eliminating intoxicating liquors from the supplies of the sutlers, applied to the post-traders. But the War Department was very "liberal" in its treatment of the post-traders, who lost no time in acquiring a malodorous reputation. They sold all sorts of intoxicants at their posts, which degenerated into common saloons, frequently saloons of a low character. At this period, and for many years thereafter, the War Department construed the term "intoxicating liquors" to mean distilled spirits only, and not to include ale, beer or wine.

In 1875 Congress placed in the hands of the President, instead of the Secretary of War, the power "to make and publish regulations for the government of the army in accordance with existing laws." This feature of the law is still in force. It was under the authority of this Act that President Hayes, on the recommendation of General Nelson A. Miles, issued his fa-

mous order,* "to prevent the sale of intoxicating liquors as a beverage at the camps, forts and other posts of the army." This order produced a healthy effect during the administration of President Hayes, but afterward, under the War Department holding that beer and wine were not "intoxicating liquors," old conditions were somewhat revived. The trading posts relapsed into the old time saloons, chiefly for the sale of beer. The term "light wines" is a military fiction. Wines always have been practically unknown in the army, except in the officers' clubs. The soldiers drank rum, whisky or beer.†

Under previous legislation and orders, the ardent spirits had been pretty well driven out of the army, but

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* The following is the text of this order:

"Executive Mansion,

"Washington, Feb. 22, 1881.

"In view of the well-known fact that the sale of intoxicating liquors in the army of the United States is the cause of much demoralization among both officers and men, and that it gives rise to a large proportion of the cases before the general and garrison courts-martial, involving great expense and serious injury to the service. .....

"It is therefore directed that the Secretary of War take suitable steps, as far as practically consistent with vested rights, to prevent the sale of intoxicating liquors as a beverage at the camps, forts and other posts of the army.

"R. B. HAYES."

† The writer has personally inspected more than one hundred army canteens, situated all the way from Portland, Maine, to the Philippine Islands, and has never been able to see or learn of any wine in these concerns.

under the rulings of the War Department the same old snake re-entered in the form of beer. The serpent crept into the camp in a very subtile and attractive form—in what became known as the "army canteen." The "outside resort," the dive adjacent to or near the army camp, was a pest from the beginning. This is true in a greater or less degree of every considerable army camp that has ever existed in civilized armies, in every country. Savage and heathen armies only appear to have done entirely without these accessories of war. The beginning of the canteen had its germ at Vancouver Barracks, at what was then Washington Territory, about 1882. The establishment was merely a room fitted up with things necessary for amusement, a lunch counter, etc., and was provided by the ladies of the garrison. Two years later, December 15, 1884, a similar institution was established at Ft. Sidney, Nebraska, by Colonel Henry A. Morrow. In both of these concerns neither beer nor any other form of intoxicants was allowed. Both were acknowledged successes from the beginning. After they had been in operation for a year or so, beer was introduced, at first on a small scale. Other army posts took up with the idea, the War Department offering no objection, as, under its own policy, beer and wine were officially recognized as non-intoxicating beverages. On October 25, 1888, an order was issued from the War Department for canteens to discontinue the sale of beer at posts where there was a post-trader. The order was issued on the ground that they conflicted with rights of

the post-trader. The beer canteen, as an institution, was officially recognized and established by an order*

* The following is the text of this order:

"1. Canteens may be established at military posts where there are no post-traders, for supplying the troops, at moderate prices with such articles as may be deemed necessary for their use, entertainment and comfort; also for affording them the requisite facilities for gymnastic exercises, billiards and other proper games. The commanding officer may set apart for the purpose of the canteen any suitable rooms that can be spared, such rooms, whenever practicable, to be in the same building with the library or reading rooms.

"2. The sale or use of ardent spirits in canteens is strictly prohibited, but the commanding officer is authorized to permit wines and light beer to be sold therein by the drink on week days, and in a room used for no other purpose, whenever he is satisfied that the giving to the men the opportunity of obtaining such beverages within the post limits has the effect of preventing them from resorting for strong intoxicants to places without such limits, and tends to promote temperance and discipline among them. The practice of what is termed as treating should be discouraged under all circumstances.

"3. Gambling, or playing any game for money or other things of value, is forbidden.

"4. Civilians, other than those employed and resident on the military reservation, are not to be permitted to enter the rooms of the canteen without the authority of the commanding officer. Commanders of canteen posts situated in states (or surrounded by communities) not tolerating the sale of intoxicants will not permit the residents or members thereof to visit the canteen for the purpose of obtaining beer or wine.

"5. Each canteen is to be managed by a suitable officer,

(General Order No. 10), dated February 1, 1889, issued by Secretaryof War William C. Endicott.* Mr. Endicott carried out his own logic by authorizing the establishment of a beer "speakeasy" in the War Department building itself, in connection with the department restaurant. In the following year, 1890, Mr. Redfield Proctor, Secretary of War under President Harrison, urged a clause in the army appropriation bill, setting apart the sum of $100,000 for fitting up and equipping these military beer canteens. This bold proposition was strenuously fought by Senators Blair, Hale, Frye and others. A part of the debate was an exposure of the War Department policy of establishing beer canteens in prohibition territory. The appropriation asked for was not adopted, but the bill which was approved June 13, 1890, contained a provision that "no alcoholic liquors, wine or beer shall be sold or supplied to enlisted men in any canteen or post-trader's store

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not a regimental staff officer, who shall be selected by the post commander and be designated as 'in charge of the canteen.' The officer will be assisted by a canteen steward, who may be a retired non-commissioned officer, and by as many other enlisted men, having regard to the strength of the garrison and business of the canteen, as the commanding officer may deem necessary."

* Eventually, the room set apart solely for the sale of beer became known as the "canteen," while the whole establishment was called the "post-exchange." This distinction began to be made officially by the Department in 1892, but was more fully elaborated in General Orders No. 46, issued in 1895.

or in any room or building of any garrison or military post in any state or territory in which the sale of alcoholic liquors, wine or beer, is prohibited by law." This injunction of Congress, however, was ignored at most of such posts under one subterfuge or another.

By the Act of January 28, 1893,* the post-traderships in connection with the military service were completely abolished. This opened the way for the complete establishment of the army canteen.

What the canteen and post-exchange should be, and rules for their conduct, were officially set forth in General Orders No. 46, of 1895. The "exchange features" were officially described as follows:

"An exchange doing its full work should embrace the following sections: (a) A well-stocked general store in which such goods are kept as are usually required at military posts, and as extensive in number and variety as conditions will justify; (b) a well-kept lunch-counter supplied with as great a variety of viands as circumstances permit, such as tea, coffee, cocoa, non-alcoholic drinks, soup, fish, cooked and canned meats, sandwiches, pastries, etc.; (c) a canteen at which, under the conditions hereinafter set forth, beer and light wines by the drink, and tobacco may be sold; (d) reading and recreation rooms, supplied with books and periodicals and other reading matter, billiard and pool tables, bowling alley and facilities for other indoor games, as well as apparatus for outdoor sports and exercises, such as cricket, football, baseball, tennis, etc.; a well-equipped gymnasium, possessing also the requisite paraphernalia for outdoor athletics. At small posts it may be impracticable to maintain all of these sections, but at every exchange there should be no less

* 27 Stat. L., 426; 2 Supp. Rev. Stat.

than two departments—the refreshment, embracing store, lunch counters and canteen, and the recreation, which includes all the other branches."

Section 10 dealt with the liquor, or "canteen" feature, and read:

"The sale or use of ardent spirits in any branch of the exchange is strictly prohibited; but on the recommendation of the exchange council the commanding officer may permit beer and light wines to be sold at the canteen by the drink whenever he is satisfied that giving to the troops the opportunity of obtaining such beverage within the post limits will prevent them from resorting for strong intoxicants to places without such limits, and tends to promote temperance and discipline among them. Should the commanding officer not approve the recommendation of the exchange council, it will be submitted for final decision to the department commander. The canteen must be in a room used for no other purpose, and when practicable in a building apart from that in which the recreation and reading rooms are located; the sale of beer must be limited to week days, and the beer consumed upon the premises. The practice known as 'treating' will not be permitted."

The official status of the beer canteen feature of the post exchange was made complete in a decision of the United States Court of Claims * rendered June 5, 1899, in which it was decided that post-exchanges, being under complete control of the Secretary of War as governmental agencies, were not subject to special tax as "retail liquor dealers." Up to that time these taxes had been paid on these beer canteens.

At first little attention was paid to the matter by

* No. 20923; Thomas B. Dugan, vs. U. S.: Promulgated June 20, 1899, Treasury Decisions, Vol. I, No. 25, p. 1171.

temperance leaders, but the institution soon began to be subjected to severe criticism in army circles. The Army and Navy Journal, The United Service Magazine and other periodicals published various accounts of the evil tendencies of the army beer saloons. "Commanding officers have generally agreed with me that it would be well to abolish the sale of beer entirely and to substitute for it other beverages.....Under the present system soldiers seem to be more generally led to drink and to offenses that go with drinking than under the old sutler and post-trader system," declared General O. O. Howard (1890), in one of his official reports. "The exchange with an open saloon would be a first rate thing to recommend for adoption in the army of the enemy," wrote Col. (now General) Henry C. Corbin in a report to General McCook. "It is for all intents and purposes, simply an authorized beer saloon kept open under the auspices and with the approval of the government," protested Surgeon General George M. Sternberg* in 1893. The criticisms of the army officers were taken up by the temperance organizations, and a vigorous agitation followed. This agitation † was immensely augmented by the scandals attending the administration of the army beer canteen during the early part of the war with Spain in 1898. The widespread publication of the drunkenness in the

* Report Secretary of War, 1893, p. 532.

† It was in the midst of this agitation that General Miles, July 2, 1898, issued the following as a general order:

camps of Alger, Chickamauga, Mobile and Tampa in connection with the canteens aroused the country, and led to Congress enacting the following in the early part of 1899:

"That no officer or private soldier shall be detailed to sell intoxicating drinks, as a bartender or otherwise, in any post exchange or canteen, nor shall any person be required or allowed to sell liquors in any encampment or fort or on any premises used for military purposes by the United States;

"The army is engaged in active service under climatic conditions which it has not before experienced.

"In order that it may perform its most difficult and laborious duties with the least practical loss from sickness, the utmost care consistent with prompt and effective service must be exercised by all, especially by officers.

"The history of other armies has demonstrated that in a hot climate abstinence from the use of intoxicating drink is essential to continued health and efficiency.

"Commanding officers of all grades and officers of the medical staff will carefully note the effect of the use of such light beverages—wine and beer—as are permitted to be sold at the post and camp exchanges, and the commanders of all independent commands are enjoined to restrict or to entirely prohibit, the sale of such beverages, if the welfare of the troops or the interest of the service requires such action.

"In this most important hour of the nation's history it is due the government from all those in its service that they should not only render the most earnest efforts for its honor and welfare, but that their full physical and intellectual force should be given to their public duties, uncontaminated by any indulgence that shall dim, stultify, weaken or impair their faculties and strength in any particular.

"Officers of every grade, by example as well as by authority will contribute to the enforcement of the order."

and the Secretary of War is hereby directed to issue such general orders as may be necessary to carry the provisions of this section into full force and effect."

The administration in power, for some reason, was exceedingly friendly to the canteen and sought a plan to nullify the prohibition of Congress. The question of the intoxicating quality of wine and beer, a question that has been uniformly affirmed in all the court decisions for forty years, was submitted to Judge Advocate General Lieber for an opinion. The opinion was promptly given that both were intoxicating and were within the prohibition of the Act. The matter was next submitted to Attorney General Griggs, who provoked much censure and ridicule by rendering an elaborate opinion in which he held that while the law forbade soldiers from selling in the canteen, it did not forbid civilians from doing so. As to the words, "nor shall any person be required or allowed to sell such liquors in any encampment," etc., the Attorney General ruled that the Act merely prohibited civilians from selling **outside** the canteen, but did not apply to civilians selling **within** the canteen. The War Department, accordingly, merely replaced their soldier bartenders with civilians and continued their regimental saloons. This rather bald subterfuge exasperated the people and stirred up Congress to pass a new law, which it did (Act approved February 2, 1901) in the following language:

"The sale or dealing in beer, wine or any intoxicating liquors by any person in any post exchange or canteen or

army transport or upon any premises used for military purposes by the United States, is hereby prohibited. The Secretary of War is hereby directed to carry the provisions of this section into full force and effect."

The brewers' organizations, aided by a section of the army establishment, made a desperate effort to restore the army beer saloon at the subsequent session of Congress. So systematic had been the efforts to make the new law a failure and to advertise and magnify the occasional debauch of soldiers who had accumulated their appetites under the beer saloon system, that these efforts might have been successful had it not been for General Miles, the Commanding General, who threw the whole weight of his influence in behalf of the prohibition. At subsequent sessions of Congress, these attempts to restore the beer regime have been renewed, but the success of the new step has become so apparent that the wishes of the beer dealers have been easily defeated.

The prohibition forces met these attempts to nullify the law prohibiting army saloons with constructive proposals designed to make the new legislation successful. These measures, chiefly promoted by the American Anti-Saloon League, consisted largely of appropriations for the construction, equipment and maintenance of suitable buildings at the various army posts to provide for the amusement and recreation of the enlisted men. These special appropriations began with the fiscal year ending June 30, 1903, and have been as follows:

Fiscal Year.	Appropriation.
1903	$500,000
1904	500,000
1905	500,000
1906	333,500
1907	350,000
1908	397,500
1909	400,000
1910	215,500

In addition to these special appropriations, the efforts of the Prohibitionists resulted in various improvements in the army ration, provision being made, at public expense, for various items of luxury or necessity to provide for which the profits of the army saloons had formerly been depended upon.

There was no established rule in the matter of spirit rations in the Confederate armies. The subject was left to the discretion of the Department commanders, who followed no uniform practice. General James Longstreet thus described the practices of the Confederate chiefs in this respect:

"I don't remember now the Confederate laws in regard to the issue of whisky as a ration. Think there was no law on the subject but the regulations, I believe, were similar to those of the old army, where it was usual to issue a gill of whisky to each soldier after severe work and exposure, when the whisky was on hand. But it was never regarded as a necessary part of the ration, and when transportation was limited, as it is always in moving armies, this part of the ration was left, so that the regulation was little better than a dead letter. We adopted the old regulations, and this with

them, and whenever the stimulants were to be had after a severe day's march through wind and rain, the (spirit) ration was issued. Early in the war, on a few occasions on reaching a town, this part of the ration was occasionally found, and when found, after severe drenching and marching or exposure in the rain, working on the roads, or in the mud, our generals would order the issuance of this ration. I do not think it was ever considered by us as rations."*

THE NAVY.—Rum was the traditional beverage of the sailor. The Continental Congress in 1775, which first fixed the army ration at one quart of spruce beer or cider, fixed the navy ration, on November 28, 1775, at one-half pint of rum per man per day, with the alternative of a quart of beer. The Act of 1801 did not allow the alternative beer ration. This ration remained unchanged until the temperance propaganda had assumed formidable proportions. As early as 1831 the Secretary of the Navy expressed his conviction† that the use made of ardent spirits was one of the greatest curses, and declared his intention to recommend a change with regard to it in the navy. The Navy Department, on the year following, tried the experiment with a schooner manned by a crew without the usual supply of rum. The schooner itself was named Experiment.‡ During the few years following, a widespread temperance propaganda took place in marine circles, especially in the merchant

* Letter written to Prof. H. A. Scomp, Dec. 12, 1886; Scomp, King Alcohol in the Realm of King Cotton, p. 560.

† Report American Temperance Union, 1838.

‡ Sixth Report American Temperance Society, p. 13.

service. The spirit ration was abandoned on merchant ships, coasters and whalers everywhere. Sailors' homes, Bethel churches and mariners' temperance societies sprang up in every port. At Charleston, South Carolina, four hundred sailors signed the pledge. In New York City fourteen hundred seamen did likewise. The entire crew of the United States frigate Columbia signed the pledge in a body, with Captain Parker, the chaplain and the purser in the lead. Practically the entire crew of the Ohio did the same.* This movement reached its height in 1842, and resulted in Congress reducing the rum ration of the navy to one gill per day, and forbidding even that being issued to persons under twenty-one years of age. Besides this, the alternative of half a pint of wine, butter, meal, raisins, dried fruit, pickles, molasses, or the value in money was allowed. The agitation, however, continued both in and out of Congress for the abolition of the spirit ration and also for the abolition of the flogging system. In presenting several petitions to Congress asking for these reforms, in 1847, Senator William H. Seward, of New York, afterward Secretary of State, said:

"I take this occasion to express my concurrence in the sentiment expressed by the Senator from Massachusetts in relation to this subject, and to say that, in my judgment, whoever is allowed the privilege of administering intoxicating liquors to others daily, and of inflicting upon them corporal chastisement for offenses, has it in his power to exercise

* Report American Temperance Union, 1842.

over them the control that a master exercises over his slaves. I do not believe it necessary that such a relation should be established either in the army or navy; and since it has been sometimes said that the practice of flogging in the navy must be continued, because no substitute has been found for it, I beg leave to say, and your own recollections, Mr. President, will bear witness to the fact, that in the Penitentiary system in the State of New York, the practice of corporal punishment has been abolished, and that discipline has been maintained with as much success with regard to labor and moral conduct, as when corporal punishment prevailed."*

This agitation, while it led to the abolition of flogging, did not immediately result in the abolition of the spirit ration. The Act of 1861 re-enacted the one gill per day ration of 1842. In July, 1862, however, Congress abolished entirely the naval spirit ration.† It was largely due to the influence of Admiral Farragut and Admiral Alexander H. Foote that this was

* Fourteenth Annual Report, American Temperance Union, p. 14.

† The following is the text of the law:

"That from and after the first day of September, 1862, the spirit ration in the navy of the United States shall forever cease, and thereafter no distilled spirituous liquors shall be admitted on board of vessels-of-war except as medical officers of such vessels direct, to be used only for medical purposes.

"From and after the first day of September next there shall be allowed and paid to each person in the navy now entitled to the spirit ration five cents per day in commutation and lieu thereof, which shall be in addition to the present pay."

brought about. Admiral Foote* was conspicuously active with voice and pen in bringing about this reform. While this Act of Congress settled forever the question of the spirit ration in the United States Navy, beer crept in in its place. At naval stations beer canteens existed after very much the same pattern as the beer canteens in the army. On ships it was the practice to allow beer to be brought on board at certain fixed hours for sale under the supervision of the ship's police. Such sales were allowed only to those who were "deserving of a privilege." This continued until February 3, 1899, when John D. Long, then Secretary of the Navy, issued the following order (General Order No. 508) wholly abolishing this beer traffic both on shipboard and at naval stations:

"After mature deliberation the Department has decided that it is for the best interest of the service that the sale or

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* When captain of the United States Brig Perry, Foote, under date of January 2, 1852, wrote the following to Rev. J. Spalding:

"I do not claim that any one should be privileged by the Government more than the other. It is not a question whether officer or sailor shall drink grog, but whether the Government shall furnish it to any in its employ.

"Strike whisky from the ration, and I have no apprehension but that the discipline of the service may be restored without the cats, as moral means may then be effectively used. But if the Government continues to send out grog, the cats should be restored as the most effectual corrective of its debasing influence."—Journal of the American Temperance Union, April, 1852; Sailors' Magazine, March 1852.

issue to enlisted men of malt or other alcoholic liquors on board ships of the navy or within the limits of naval stations, be prohibited.

"Therefore, after the receipt of this order, commanding officers and commandants are forbidden to allow any malt or other alcoholic liquor to be sold or issued to enlisted men, either on board ship or within the limits of navy yards, naval stations or marine barracks, except in the medical department."

After more than a hundred years of experience, all forms of intoxicating liquors have been forever abolished from the Navy of the United States. The dram drinking, boisterous, rollicking, drunken marine has become a thing of the past. Naval warfare has become a high science in which the carousing, tipsy brawler has given way to the educated, up-to-date mathematical gunner and engineer. In this modern naval warfare, the patron of the rum ration and the beer hall has no place save perhaps to scrub the decks, carry slops and shovel coal. The spirit ration was thoroughly tried and discarded with other antiquated, worn out failures. The navy and the army beer saloons were also thrown onto the scrap heap of the past for no other reason than that something better was found to take their place. The alcohol was put into smokeless powder to be used in blowing up the enemy rather than into our own soldiers to rot their bodies and befuddle their brains.

The Aborigines.

CHAPTER VI.

"Whether serpents' teeth were sown here and sprung up men; whether men and women dropped from the clouds upon this Atlantic island; whether the Almighty created them here, or whether they emigrated from Europe, are questions of no moment to the present or future happiness of man."—Letter of John Adams to Thomas Jefferson, June 28, 1812. Works of John Adams, Vol. X, p. 17.

Bishop Whipple has estimated that the Indian wars have cost the United States five hundred millions of dollars, besides the appalling cost in blood and suffering. According to the same authority, it has cost an average of one hundred thousand dollars to kill an Indian.

Since the discovery of America and its colonization by Europeans, practically every Indian war, with its fearful record of human suffering the bare mention of which brings a chill of horror, has been caused, directly or indirectly, by the traffic in intoxicating liquors. A drunken Indian commits an outrage, upon which infuriated whites retaliate with a similar outrage; Indians are robbed of their lands, ponies and blankets through being intoxicated with strong drink; in some variety of one of these transactions is found

the germ of nearly every Indian slaughter that has disgraced the history of American colonization.

With the exception of the Indians of Mexico and Central America, and a few tribes in the far Southwest of what is now the United States, the American Indians were almost wholly ignorant of intoxicating liquors at the time of the discovery of America by Columbus. The Indians of Northern Vermont had some knowledge of making a variety of beer from fermented corn (Williams, Hist. Vt. p. 190). Doctor Dorchester says (Liquor Problem p. 115) that some of these tribes made a mild fermented beverage from the sap of maple trees. These beverages, however, were but slightly used. The Hurons, among the Central Great Lakes, made a weak beer by throwing unripe corn into a pool of stagnant water, where it was left for two or three months. From this decayed product they made a thin fermented gruel which was used chiefly in important tribal feasts. The Indians of the Gulf states made a large use of an intoxicating beverage called "The Black Drink" by the whites, but known to the Indian tribes as asse, assinola, assini, or yahola.* This beverage was a steeped and fer-

* Osceola, the name of the famous Seminole chieftain, is an English corruption of "asseseholar" the Seminole dialect expression for "black drink." Osceola's wife, who had a trace of negro blood, was kidnapped by white men and taken away into slavery in the presence of the Indian Agent, General Thompson.

mented decoction of the cassia plant (**ilex cassice** or **ilex vomitoria**). Though this beverage was slightly intoxicating, it was a violent emetic, and used only in ceremonials, conspicuously in the Busk-e-tau of the Creeks. While all of these beverages were somewhat alcoholic, they were almost wholly unknown outside of religious ceremonials.

It was not until the coming of the white man that drunkenness was known to the aborigines, save in the far Southwest. At the very first meeting of the French and Indians, which took place on the Island of Orleans, in the St. Lawrence River, in 1535, Jacques Cartier spread a feast of bread and wine for Chief Donnaconna and his Indians. At the first interview of Henry Hudson, the Dutch explorer, with the Indians, in New York Harbor in 1609, a drunken carousal took place. The Indians became drunk on a bottle of spirits supplied by Hudson, and from that event the Island of Manhattan, on which New York stands, took its name. It became known in the Delaware language as Manahachtanienk, which is equivalent in English to "The-place-where-we-all-got-drunk."* The English corrupted this word into "Manhattan." Likewise spirits figured conspicuously in the first meeting of the English with the Indians of Massachusetts. Shortly after the landing, in 1620, the native king, Massasoit, visited the settlement at Plymouth, where the gov-

* Heckwelder, Memoirs, Hist. Society of Pa. Vol. XII, pp. 73, 262.

ernor treated him to a military salute with music and a "pot of strong water."* From these early days to the present, intoxicating liquor has been a disturbing factor in most of the dealings of the white man with the Indian.

Another contributing source of trouble between the red and white races has been the inability of either to comprehend the view point and ideals of the other. The Indian is, in a remarkable degree, a religious being. Almost every act of his life is a religious one. Every Indian council, of war or peace, is a religious function, accompanied by religious ceremonials. Hunting and fishing are religious acts. Corn, the emblem of life, is planted and harvested with sacred rites. The planting of corn by machinery is about as confusing to the Indian as administering the communion through the nozzle of a steam fire engine would be to the white man.

In the Indian mind, it was God who first made the Four Directions which hold together the Cosmos. The Spirit of the South Wind presided over the warm weather, assisted by Thunder, the crow and the plover. The Spirit of the North Wind came with his wolves, gave battle to and drove back the summer days. The Spirit of the West Wind brought the storms. His wings hid the sun. He had warred with and overthrown the East Wind, the God of the Dawn, on the

* Purchas, Pilgrims, Part IV, Book 5; Ames, the Mayflower and Her Log, p. 305.

plains of the western skies. The Moon was the Wife of the Sun, from which union was born Fire, the Heart of Being, upon which depended all existence, spiritual and corporal. Through this union the Master of Breath, Ruler of the Winds, built the Fire of Life, in the Indian heart. The Circle was a symbol of life. The rain was the falling tears of Indians in Heaven. The stars had their quarrels. The comet was a messenger of awful things. The Milky Way was the pathway of the dead who went to the other world in a stone canoe. On the way they stopped to eat from a gigantic strawberry on a beautiful island. Thence they crossed a boiling chasm on a slippery log. Those who fell off were transformed into fishes. The firmament of the Heavens was domed with ice against which the Serpent God coiled his back, scraping off the ice dust, which fell as snow. The Eclipse was a horrid thing, which tried to eat up the Sun, to be driven away by the warriors with their bows and arrows. The rainbow was a great serpent whose shiny scales produced the colors. An eternal bird, mated to the Snake, had her nest upon the Sacred Pipestone, and was incapable of reproducing herself because the serpent, her mate, destroyed the young as the eggs were hatched. The noise of their destruction was the thunder of the storm. Another gigantic serpent crept up the Mississippi Valley on a visit to the Great Lakes. A great river was formed in its trail, which the white man calls the "Mississippi." The child of the forest reached out into the great beyond. "I shall soon be

dead as is the sun in the great waters, but I shall live again as he lives," said the Indian in his prayer. The Indian had no more conception of private ownership of land than the European has of private ownership of sunlight, air or water. Christopher Columbus' first glimpse at the Indian in his purity was thus reported by him to Ferdinand and Isabella: "I swear to your Majesties," he said, "that there is not a better people in the world than these—more affectionate, affable or mild. They love their neighbors as themselves. Their language is the sweetest, softest and most cheerful, for they always speak smiling."* Such a being, endowed with all the imagery of the old Hebrew prophets and living so akin to nature, could ill adapt himself to the cubes, squares, angles, certainties and machinery of civilization. And the attempt to summarily fit him into the environments of the Anglo-Saxon life was like putting a poet into a strait-jacket.

A mere glance at early attempts at legislation regarding the Indians shows, as nothing else can, the complete incapacity of the colonists to deal with the subject. Many of these laws took the form of offering rewards for Indian scalps, very much as legislatures of today offer premiums for the scalps and tails of wolves. In 1760, during the troubles with the Cherokees, North Carolina enacted a law providing for the payment of bounties for Indian scalps and also pro-

* Macgregor: Progress of America, Vol. I, p. 69.

viding that Indians captured should be sold as slaves.* In 1660, Virginia authorized the seizing and selling of Indians as slaves to pay for depredations.† On July 7, 1764, the Governor of Pennsylvania issued a proclamation offering the following schedule of bounties for Indians captured or scalped:‡

For every male above ten years captured.....$150
For every male above ten years, scalped, being killed.... 134
For every female, or male, under ten, captured..... 130
For every female above ten years, scalped, being killed.... 50

Pennsylvania did not hesitate to offer rewards for the scalps of women and the kidnapping of babies. By the Act of July 31, 1760, South Carolina voted an appropriation of 3,500 pounds "to pay for the scalps of Cherokee Indians."§ Even General Washington seems to have countenanced the scalping of Indians, in at least one case.¶ In 1758, New Jersey authorized her paymaster to procure "fifty good, large, strong and fierce dogs" to hunt Indians with.* In 1708, South Carolina offered a gun as a reward for capturing or killing an Indian.†

Legislation for the training of the Indian in civilized ways was on about the same intellectual plane.

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* Martin: Laws of North Carolina, Vol. I, p. 135.
† Henning's Statutes, Vol. II, pp. 15, 16.
‡ Gordon: History of Penn., p. 438.
§ Statutes of South Carolina, Vol. IV, p. 128.
¶ See Pennsylvania Archives (1779) p. 569.
* Nevill: Code of New Jersey, Vol. II, p. 202.
† Statutes of S. C., Vol. II, p. 324.

New Jersey, in 1713, enacted that an Indian could not own land.* In 1796, the Province of Carolina passed a law declaring that Indians must bring in skins of wild beasts or be whipped.† Here is a sample of early Massachusetts Indian legislation:

"And it is ordered that no Indian shall at any time powaw or perform outward worship to their false gods, or to the devil, in any part of our.....jurisdiction and if any transgress this law, the powawer shall pay 5 pounds and every other countenancing by his presence or otherwise (being of age of discretion) twenty shillings." ‡

As late as 1815, an official recommendation to the Secretary of War advocated destroying the Indians by creating disease with a meat diet. The following is an extract:

"It is much cheaper reducing them by meat and bread than by force of arms; and from the observations I have had the opportunity of making, that three or four months full of feeding on meat and bread, even without ardent spirits, will bring on disease, and, in 6 or 8 months great mortality. I would it be considered a proper mode of warfare. I believe more Indians might be killed with the expense of $100,000 in this way than with one million dollars expended in the support of armies to go against them."§

In 1639, Connecticut declared war against the Pequods—a trouble that grew out of the liquor traffic

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* Nevil: Code, Vol. I, p. 23.

† Statutes, Vol. II, pp. 108-109.

‡ Laws of Mass., Ed. of 1672, p. 77.

§ Letter from U. S. Indian Agent, Ft. Wayne, Ind., to the Secretary of War, dated Oct. 1, 1815. American State Papers, Indian Affairs, Vol. II, p. 34.

—and ordered among the supplies for the troops one hogshead of "beare," "three or four gallons of strong water" and two gallons of "sacke." The colonists surprised an Indian village and massacred about 600 men, women and children. "It was supposed that no less than six hundred Pequod souls went down to hell that day," wrote the Rev. Cotton Mather.

Then came King Philip's war—also caused chiefly by selling drink to Indians.* King Philip was slain. "The people prayed the bullet into King Philip's heart." His body was torn into bits. His head was sent to Plymouth where it was publicly exposed for twenty years. His hands were sent to Boston. "We have heard of two and twenty Indians slain, all of them, and brought to hell in one day. . It was not long before the hand which now writes [1700], upon a certain occasion, took off the jaw from the exposed skull of that blasphemous Leviathan," wrote the Rev. Increase Mather regarding Philip, and the trouble.

In striking contrast to this ghastly stupidity there

* The Black Hawk War, according to Black Hawk himself, had its inception in a drunken row in St. Louis, in 1804. A series of drunken escapades followed, particularly that of July 24, 1827, at Prairie Du Chien, when Red Bird and Black Hawk, under the inspiration of a keg of whisky, killed two persons, wounded another and then went to the mouth of the Bad Axe River where they waylaid two keel boats, killed two more persons and wounded others. A series of such affairs, caused by whisky peddlers, led to the general slaughter known as the "Black Hawk War."

is an occasional glimpse of sanity. The General Court of Massachusetts, in 1633, decreed that "no man shall sell or give any strong water to an Indian."* This is probably the first authoritative prohibition of the sale of intoxicants to the American Indians. In 1679, New Jersey forbad selling to Indians on penalty of twenty lashes for the first, thirty for the second and imprisonment for an indefinite period for the third offense.† Pennsylvania forbad selling to the Red Men in 1701.‡ Here and there missionaries did what they could to stem the tide of debauchery of the Indian through strong drink. But the colonists, themselves a drinking people, were not prone to rigidly enforce their own laws against selling drink to aborigines, except for a time, after some appalling outrage had been committed on account thereof. A particularly bright spot in the treatment of Indians by the colonists was the furious war that the Jesuit Fathers of Canada waged against selling drink to Indians both before and after the Iroquois War. About 1640 Major La Frediere became commandant of the garrison stationed at Montreal. He straightway turned his quarters into a dramshop for selling liquor to Indians. He not only made them drunk, but systematically swindled them besides. An investigation led to his being ordered home, but his successors followed the same policy, though not quite so openly. In the quarrels, brawls

* Records of Mass., Vol. I, p. 106.

† Leaming and Spicer; Laws of N. J., p. 133.

‡ Dallas: Laws of Pa., Vol. I, pp. 39-40.

and public scandals growing out of this beastly traffic was born the bloody Iroquois War with its nightmare of horrors. From the beginning, the Jesuit Fathers bitterly fought this practice. In this opposition many of the chiefs assisted. In the summer of 1648 there took place at Sillery what was probably the first distinctive temperance meeting on American soil. The meeting was inspired by Father Jerome Lalemant, but the speaker was an Algonquin chief. The drum beat after mass and the Indians assembled to listen to the speaker, who, in his own name and in the name of the other chiefs proclaimed the Governor's edict against drunkenness, and exhorted the braves to abstinence, declaring that all drunken Inddians would be handed over to the French for punishment. * After the Iroquois War, in 1658, Vicomte d' Argenson became governor of the Colony, and during his short rule the Jesuit Fathers prosecuted with renewed vigor their war against selling drink to Indians. Bishop Laval launched excommunications by the wholesale against drink sellers, even making this offense a **cas reserve,** to be revoked only by himself. It was at the demand of the Jesuits that d'Argenson decreed the death penalty for those found guilty of this offense. Shortly after the arrival of Governor d'Argenson's successor, Avaugour, in 1661, one man was whipped and two were shot, having been convicted of selling

* Parkman: Old Regime in Canada: Lalemant, Relation, p. 43.

liquor to Indians.* Soon a woman was convicted of this offense and sentenced to imprisonment. On account of the offender being a woman, Father Lalemant interceded. Governor Avaugour, eager for an excuse, flew into a passion and rescinded the whole law. Grieved and desperate, Bishop Laval attempted to stem the tide with fresh edicts of excommunication, but was forced to revoke them in the following year, 1662.† The Fathers then appealed to the King for aid, who referred the matter to the Sorbonne. This body, after considering the matter, pronounced selling brandy to Indians a "mortal sin."‡ The King being an anti-prohibitionist, was not pleased with this and re-referred the matter to an assembly of the "chief merchants" of Canada. These men, being chiefly interested in the brandy traffic, naturally reported adversely to prohibition, and the King, in 1691, ordered that the brandy trade in Canada be no longer interfered with.§ An enthusiastic supporter of Bishop Laval in his efforts to prevent the selling of brandy to Indians was Father Le Mercier. This doughty priest carried his opposition so far that persons found selling were personally led by him to the door of the church, after sermon, and compelled to kneel there while he applied

* Journal des Jesuits, Octobre, 1661.

† The text of this sentence of excommunication may be found in the Appendix of **Esquisse de la Vie de Laval.**

‡ Deliberation de la Sorbonne sur la Traite des Boissons, 8 Mars, 1675; Memoire sur la Traite des Boissons, 1678.

§ LeRoy a Saint-Vallier, 7 **April, 1691.**

the lash to the culprit's back.* Another conspicuously active priest, at a little later period, was the brilliant and caustic Father Etienne Carheil, in charge of the old Marquette Mission at Michilimackinac. One of his furious letters of protest to the Intendent was a classic of denunciation.† To these faithful followers of Loyola must be given the credit of making the first strenuous war against selling drink to Indians that was waged on the soil of the New World. For half a century these zealous priests fought this traffic, not only all over Canada, but all over France as well. Much of the time they were successful, but were finally overwhelmed by the powers of greed. These North Atlantic tribes in whose behalf this heroic struggle was conducted by the Jesuit Fathers two hundred and fifty years ago, are now known only to history. They have been swallowed up in the passion for drink —exterminated—save a remnant that puts in an annual appearance at country fairs.

The state and national legislation which has grown up, prohibiting the sale of liquors to Indians, or the introduction of it into the Indian country, is largely due to the efforts, the protests and the agitation of the Red Men themselves. As far back as 1741, we find the Indians of Pennsylvania complaining to the governor of that colony about the rum being brought among

* Memoire de Dumesnil, 1671.

† Lettre du Pere Etienne Carheil de la Compagnie de Jesus a la Intendent Champigny, Michilimackinac, 30 Aout, 1702 (Archives Nationales) Appendix I.

"My Brothers and Friends:

"I am glad to hear you observe, that freedom of speech ought always to be made use of amongst brothers—this, brothers, really ought to be the case. I will now, therefore, take the liberty to mention that most of the existing evils amongst your red brethren, have been caught from the white people; not only that liquor which destroys us daily, but many diseases which our forefathers were ignorant of before they saw you.

"My Brothers and Friends:

"I am glad, with my brother chiefs, that are now present, to find that you are now ready to assist us in everything that will add to our good—we hope that the Great Spirit may aid you in all your good undertakings with respect to us. We plainly perceive, brothers, that you see every evil that destroys your red brethren. It is not an evil, brothers, of our own making; we have not placed it amongst ourselves; it is an evil placed amongst us by the white people—we look up to them to remove it out of our country. If they have the friendship for us, which they tell us they have, they certainly will not let it continue amongst us any longer. Our repeated entreaties to those who brought this evil amongst us, we find, has not the desired effect. We tell them, brothers, to fetch us useful things—bring goods that will clothe us, our women and our children, but not this evil liquor which destroys our reason; that destroys our health; that destroys our lives. But all we can say on this subject is of no service, nor gives relief to your red brethren.

"My Brothers and Friends:

"I am glad that you have seen into this business as we do. I rejoice to find that you agree in opinion with us, and express an anxiety to be, if possible, of service to us, to remove this great evil out of our country,—an evil that has so much room in it—that has destroyed so many of our lives

—that causes our young men to say, 'we had better be at war with the white people. This liquor they introduce into our country is more to be feared than the gun and tomahawk; there are more of us dead since the treaty of Greenville than we lost by the six years war before. It is all owing to the introduction of this liquor amongst us.' Brothers, how to remove this evil from our country we do not know. If we had known that it would have been a proper subject to mention to you in our council yesterday, we should surely have done it. This subject, brothers, composes a part of what we intend to make known to the Great Council of our white brethren. On our arrival there, we shall endeavor to explain to our great Father, the President, a great many of the evils that have arisen in our country from the introduction of this liquor by the white traders.

"Brothers and Friends:

"In addition to what I have before observed of this great evil in the country of your red brethren, I will say further, that it has made us poor. It is this liquor that causes our young men to go without clothes, and our women and children to go without anything to eat; and sorry am I to mention now to you, brothers, that the evil is increasing every day, as the white settlers come nearer to us and bring those kettles they boil that stuff in they call whisky, of which our young men are so extremely fond. Brothers, when our young men have been out hunting, and are returning home loaded with skins and furs, on their way if it happens that they come along where some of this whisky is deposited, the white man who sells it tells them to take a little and drink. Some of them say no. I do not want it. They go until they come to another house, where they find more of the same kind of drink. It is there again offered. They refuse, and, again the third time, but finally the fourth time, one accepts it and takes a drink, and getting one he wants another, and then a third and fourth till his senses have left him. After his rea-

son comes back to him, he gets up and finds where he is. He asks for his peltry. The answer is, you have drank them. Where is my gun? It is gone. Where is my blanket? It is gone. Where is my shirt? You have sold it for whisky. Now, brothers, figure to yourself what a condition this man must be in—he has a family at home, a wife and children that stand in need of the profits of his hunting. What must their wants be, when he is even without a shirt?

"This, brothers, I assure you, is a fact that often happens amongst us. As I have before observed, we have no means to prevent it. If you, brothers, have it in your power to render us any assistance, we hope the Great Spirit will aid you. We shall lay these evils before our great and good Father; we hope he will remove them from amongst us. If he does not, there will not be many of his red children living long in our country. The Great Spirit, brothers, has made you see as we see. We hope, brothers, and expect, that if you have any influence with the Great Council of the United States, that you will make use of it in behalf of your red brethren.

"My Brothers and Friends:

"The talks that you delivered to us when we were in council yesterday, were certainly highly pleasing to myself as well as to my brother chiefs. We rejoiced to hear you speak such words to us; but we all plainly saw that there was a great difficulty in the way that ought to be removed before your good intentions toward us could be of any effect. We agree with you, brothers, that this great evil amongst us, spirituous liquors, must first be removed. After this is done, we hope you will find an easy access to us, much easier than you can have at present.

"My Brothers and Friends:

"I hope that we all try to prevent the introduction of spirituous liquors in the country of your red brethren, the

Great Spirit will aid us in it, and then we shall meet with no difficulty in doing it. After this is done, we hope that the great services you have designed to do for us, the great things mentioned by you in our council yesterday, may take place and have that success you so much desire.

"I have nothing further to say."

This remarkable address of the old warrior effected a revolutionary change in the attitude of the meeting. The gathering, through its committee, promptly formulated an address to Congress embodying the speech of the Indian Chieftain. This committee was composed of Evan Thomas, Elias Endicott, John Brown, David Brown, John McKim, Joel Wright and George Elliott. The memorial prepared by the Committee was, on January 7, 1802, referred to a Committee of Congressmen consisting of Samuel Smith, Griswold, Davis, Hoge and Randolph, and was then printed as a government document. *

From Baltimore, Mechecunnaqua went on a visit to Washington and begged President Jefferson to aid in the movement to prevent the sale of liquor to Aborigines. The President took a lively interest in the matter and wrote letters to the Ohio legislature asking that body to enact legislation prohibiting the selling of intoxicants to Indians. On January 27, 1802, in a message to Congress, relating to Indian affairs, President Jefferson said:

* One of the original copies of this document, containing the text of Mechecunnaqua's address, is still preserved in the Congressional Library at Washington.

" These people [Indians] are becoming very sensible of the baneful effects produced on their morals, their health and existence by the abuse of ardent spirits and some of them earnestly desire a prohibition of that article from being carried among them. The Legislature will consider whether the effectuating of that desire would not be in the spirit of benevolence and liberality which they have hitherto practiced toward these our neighbors, and which has had so happy an effect toward conciliating their friendship. It has been found, too, in our experience that the same abuse gives frequent rise to incidents tending much to commit our peace with the Indians." *

Congress responded quickly to the suggestion of the President. The Act of March 30, of that year, provided "That the President of the United States be authorized to take such measures from time to time as may appear to him expedient to prevent or restrain the vending or distributing of spirituous liquors among all or any of the said Indian tribes, anything herein contained to the contrary thereof notwithstanding."† Mechecunnaqua and Wells next visited the legislatures of Kentucky and Ohio, where their efforts were continued to secure legislation against the sale of liquor to Indians.

Mechecunnaqua, in this movement, inspired and promoted the first step ever taken by the government of the United States looking toward doing anything to the liquor traffic except to tax it. He was the "orig-

* Messages and Papers of the Presidents, Vol. I, p. 334; American State Papers, Indian Affairs, Vol. I, p. 653.

† U. S. Statutes at Large, Vol. II, p. 146.

inal prohibitionist," the first "Christian lobbyist," the first prohibition law ever enacted by Congress being his handiwork. He was a man of great intellect, of lofty character, a patriot to the core, a friend of Washington and Kosciusko and intensely devoted to the welfare of his fellow Indians. His education in a Jesuit school in Canada may have helped inoculate him with hatred for the liquor traffic. He died at Ft. Wayne, Indiana, July 14, 1812, and was buried with the honors of war. The fact that he wore feathers instead of a silk hat may, in part, account for his not having been given the place in the history of the temperance reform that his works justly entitle him to.

Directly after the prohibition efforts of Mechecunnaqua there followed a remarkable moral suasion campaign throughout the central west, led by Ellskwatawa, son of the Shawnee chief Pukeesheno and brother of the great Tecumseh. When he entered upon his campaign, Ellskwatawa or Lawlewasaikaw changed his name to Tenskwautawa, but he is better known to white people as "The Prophet." During the month of November, 1805, Ellskwatawa called around him the chiefs and principal men of the Shawnees, Wyandotts and Senecas, in their ancient capital of Wapakoneta, on the Auglaize River in Ohio. He there announced that he had been made the bearer of a new revelation from the Master of Life, who wished to save the red children from destruction. It was revealed to him that he should denounce witchcraft, medicine jugglers and especially firewater. Drinkers of the lat-

ter were especially accursed after death in the dwelling of the Devil. There they were compelled to stand in a corner, through all eternity, with flames of fire pouring out of their mouths. Ellskwatawa,* like Tecumseh, was addicted to drink in his early years, but the horrid scene in the House of the Devil reformed him. Three years later, Ellskwatawa visited Governor Harrison to explain the nature and purpose of his crusade. In closing his speech to the Governor, the Chieftain said:

"I told all the redskins that the way they were in was not good, and that they ought to abandon it. That we ought to consider ourselves as one man; but we ought to live agreeably to our several customs, the red people to their mode, and the white people after theirs; particularly that they should not drink whisky; that it was not made for them, but for the white people, who, alone, knew how to use it; and that it was the cause of all the mishaps that the Indians suffer..... I have listened to what you have said to us. You have promised to assist us; now I request you, in behalf of all the red people, to use your exertions to prevent the sale of liquor to us." †

Neither Tecumseh nor Ellskwatawa, though men of acknowledged power and influence, were beloved by the white Americans of their day. Tecumseh was conspicuous in the campaigns of Mechecun-

* Meetheetrashe (Turtle Laying Egges in the Sand) was the mother of triplets, Ellskwatawa (Open Door), Tecumseh (Tiger Crouching for his Prey) and Kumskaka (Tiger that Flies in the Air).

† Drake: Tecumseh, pp. 107-9.

naqua leading up to the Treaty of Greenville and, for twenty years before his death, he led or played a conspicuous part in nearly every Indian battle with the whites. From 1804 to 1813, he kept the Indians of the South and Central West in a perpetual ferment over his Indian Confederacy* formed to drive the whites back from their country.† Ellskwatawa led the Indians at the battle of Tippecanoe and both he and Tecumseh fought with the British in the war of 1812. Tecumseh was made a Brigadier General in the British Army and Ellskwatawa received a pension from the British government till his death.

While both were historic enemies of the whites, none has ventured to deny the beneficent effects of Ellskwatawa's weird harangues among the children of

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* For an account of this Confederacy, see Drake; Life of Tecumseh and Clarke; Origin and Traditional History of the Wyandotts and Tecumseh and His League.

† Prior to the battle of Ft. Meigs, Tecumseh and General Harrison had formed a compact to prevent cruelty on each side. At this battle, Colonel Dudley and a detachment were cut off by the Indians and a slaughter was under way, when Tecumseh appeared and stopped it according to his agreement. One Chippewa chieftain refused to desist, whereupon Tecumseh buried his tomahawk in his head. When Tecumseh himself was killed at the battle of the Thames, Oct. 5, 1813, American soldiers skinned and horribly mutilated the corpse. In his younger days, Tecumseh was addicted to drink and many acts of cruelty were charged up to him. When he ceased to drink, he left off the practices of cruelty and bitterly opposed the same.

ber 11, 1824. This legislation was supplemented, in 1829, by a moral suasion propaganda in which a total abstinence pledge from distilled spirits was drawn up in the Cherokee language, and widely circulated by Indian societies.

On September 19, 1831, the "Western Cherokees," those who had voluntarily emigrated west of the Mississippi about twelve years before, passed a law prohibiting the selling of ardent spirits within five miles of the National Council. On September 6, 1839, after the main body of the Cherokees had been driven from their Georgia home, to Indian Territory, the remnants of the re-united nation met at Tahlequah to draft a constitution and enact a code of laws. The first law enacted was one for the protection of women. The sixteenth law, passed on September 26, read:

"Be it enacted by the National Council, that the introduction or vending of ardent spirits in this Nation shall not be lawful; and any and all persons are prohibited from bringing or engaging in the traffic of ardent spirits within five miles of the National Council during its session, or one mile from any of the places designated for holding courts during their sessions, or one mile from any public gathering, or meeting in the Nation, under penalty of having same wasted or destroyed by any lawful officer or authorized person, by the sheriff, for such purpose."

The formation of the National Cherokee Temperance Society in 1836, was followed by the organization of branches in numerous towns and villages. On July 3, 1843, at the Grand Council fire, held at Tahlequah, a solemn anti-liquor compact was formed between rep-

resentatives of the Cherokees, Creeks and the Osages. Section Eight of the compact read:

"The use of ardent spirits, being a fruitful source of crime and misfortune, we recommend its suppression within our limits, and agree that no citizen of our Nation, shall introduce it into the territory of any other Nation party to this compact."

This same clause was agreed to again in 1886, at Eufaula, in the compact entered into between the Cherokees, Choctaws, Chickasaws, Creeks, Seminoles, Comanches, Wichitas and affiliated bands of Indians residing in the southwest part of the Territory.

The compact of 1843 was followed by a renewed temperance agitation that flourished for seven years, under the leadership of the Cherokee Temperance Society, which reached a membership of seventeen hundred and fifty-two. The prohibition laws mentioned above were elaborated and strengthened by the Acts of October 25, 1841, November 4, 1860, again by the laws of 1875, and again by the Act of November 29, 1880.

This legislation against drink by the Cherokees was followed by similar legislation by the others of the Five Civilized Tribes. Early in 1827 one of the Choctaw districts prohibited the introduction and sale of ardent spirits. By January 28, 1829, all the other districts had adopted the same policy. Legislation against drink, and temperance societies were established immediately after the Choctaws were settled in

their Western home. The Chickasaws enacted their first Prohibition legislation in 1828.

These efforts on the part of the Five Civilized Tribes to keep liquor away from their people have been continuous from those times to the present. They have not only legislated against and fought the traffic on their own account, but in their dealings with the United States Government have always insisted that proper efforts be made to eliminate this traffic. The Commission to the Five Civilized Tribes, commonly known as the "Dawes Commission," was created by Congress on March 3, 1893, "for the purpose of extinguishment of the National or tribal titles to any lands within that Territory now held by any or all such Nations or tribes, either by cession of the same or some part thereof to the United States, or by the allotment and divisions of the same in severalty among the Indians of such Nations or tribes....." The agreement made by this commission with the Creek Indians, approved June 8, 1898, under which said Indians surrendered their tribal government and agreed to allotment of their lands, contained the following provision:

"The United States agrees to maintain strict laws in the Territory of said Nation against the introduction, sale, barter or giving away of liquors and intoxicants of any kind or quantity."

Substantially this same clause was included in the agreements made with the other tribes.* Scarcely

* Kappler: Indian Laws and Treaties, Vol. I, pp. 651, 661, 664, 739, 798, (Sec. 73) together with page 95, proviso.

had these agreements been completed when a project was set on foot by white men to admit the Indian Territory and Oklahoma Territory into the Union as a single state, and without any provision whatever for protecting the obligations of the agreement to keep intoxicating liquor out of the territory occupied by the Five Civilized Tribes.

The Indians of these tribes were at once up in arms, the chief reason for their objections being the fear that the sale of liquor would be permitted under the new state. To give voice to their protest, an informal meeting of Indians of the Five Tribes was held at Eufaula, November 28, 1902. This meeting, to further voice their protest, called a convention at the same place for May 21, 1903. This convention laid plans for opposing any scheme of statehood that would endanger the Prohibition laws of the Territory. Among the recommendations made by the convention, and signed by the principal Chiefs of each of the Five Nations, was the following:

"6. We further recommend that the general council of each nation address a memorial to the various religious and temperance organizations of the United States requesting them to assist the Indians of the Five Civilized Tribes in their efforts to prevent the annexation of Indian Territory to Oklahoma and to secure an independent state government for Indian Territory under a constitution which will protect the Indian from the baneful influence of intoxicating liquors."

A joint committee was also formed, consisting of

"I shudder at the deed. A squaw offered her little boy four years old, to the crew of the boat for a few bottles of whisky.

"I know from good authority that upwards of eighty barrels of whisky are on the line ready to be brought in at the payment.

"No agent here seems to have the power to put the laws in execution.

"May 31. Drinking all day. Drunkards by the dozen. Indians are selling horses, blankets, guns, their all, to have a lick at the cannon. Four dollars a bottle! Plenty at the price. Detestable traffic.

"June 3. A woman with child, mother of four young children, was murdered this morning near the issue-house. Her body presented the most horrible spectacle of savage cruelty; she was literally cut up.

"4. Burial of the unhappy woman. Among the provisions placed in her grave were several bottles of whisky. A good idea if all had been buried with her.

"June 5. A drunken Pottawatomie killed a Sauk. The murderer after the perpetration of the deed, was mortally stabbed by his own father-in-law. Indian way of redressing wrongs.

"N. Rumor. Four Iowas, three Pottawatomies, one Kickapoo are said to have been killed in drunken frolics.

"7. Attempt at murder. A Pottawatomie was discovered endeavoring to kill his aunt, our next neighbor. Timely assistance, a knock down, prevented him.

"11. Another bluff accident. Severe scalding. An Iowa drew a knife to stab a companion, when another friend without the least ceremony or hesitation, poured over the aggressor's head a full kettle of boiling soup. The unhappy man escaped death, lost his hair only, and presents a melancholy appearance amongst his kindred.

"16. A monster in human shape. On the Mosquito

[Creek], a savage returning home from a night's debauch, wrested his infant son from the breast of his mother and crushed him against a post of his lodge.

"17. **Tekchabe**, another Mosquito Pottawatomie, shot an Indian through the thigh merely for the pleasure of killing, and finished the unhappy man with the butt of his gun; pounding the head literally to atoms. The nephew of the murdered individual, as a matter of course, stole up to Tekchabe's camp, found him lying down apparently composing himself to sleep and shot him instantly through the head. This whole affair was settled within twenty minutes time.

"18. Arrival of a sub-agent, Mr. Cowper. His presence seems to keep the whisky sellers in some awe, "Don't know what he might or will do." Secure the liquor in cages. The many murders committed act powerfully upon the minds of the Indians. They begged the agent in council to prevent the poison being brought among them.

"June 20. A young brother of McPherson killed his assistant blacksmith of the Pottawatomies, a Mr. Case an old man; shot him through the head. Got clear in the court at Liberty.

"July 6. A company of dragoons from Fort Leavenworth arrived at Bellevue with the Omaha women whom the Sauks had surrendered to them, and delivered them over to their relations. Three of the dragoons, in crossing the Platte opposite the Otoe village were drowned.

"Aug. 4. Arrival of the **Antelope**. More whisky landed.

"6. An encounter lately took place between the Omahas and Sioux; originating in the stealing of a few horses by the latter. About forty are said to have been slain on both sides.

"7. The son of the prophet of the Kickapoos killed the blacksmith of the nation. It is rumored that the white man was the aggressor.

"8. Arrival of **St. Peter's** with the annuities.

"19. Annuities $90,000. Divided to the Indians. Great

gala. Wonderful scrappings of traders to obtain their Indian credits.

"20. Since the day of payment, drunkards are seen and heard in all places. Liquor is rolled out to the Indians by whole barrels; sold even by white men even in the presence of the agent. Wagon loads of the abominable stuff arrive daily from the settlements; and along with it the very dregs of our white neighbors and voyagers of the mountains, drunkards, gamblers, etc., etc. Three horses have been brought to the ground and killed with axes. Two more noses were bit off, and a score of horrible mutilations have taken place. One has been murdered. Two women are dangerously ill of bad usage."

Pursuant to the powers conferred by Congress on the President, in 1802, authorizing him to take measures to suppress the liquor traffic in the Indian country, regulations were made by the War Department to prevent the traffic. This, however, was in the days when the rum ration was rampant in the army, and the carrying out of a temperance measure was not very thoroughly done. This was practically acknowledged in a report of Secretary of War James Barbour, made on February 16, 1828, stating that such a regulation had been made, but that 'some relaxation was made of this rule, which permitted the use of it (spirits), but only along our northern boundary, and to prevent the utter ruin of our trade which, it was thought, must have followed, if its use were continued by the British traders on that frontier, and restricted to ours." *

* State Papers, Twentieth Congress, 1st Session, Doc. 148.

Shortly afterward, Congress, by virtue of its constitutional powers to regulate commerce with Indian tribes,* enacted (Act approved June 30, 1834) that "Every person who shall, within the Indian country, set up or continue any distillery for manufacturing ardent spirits, shall be liable to a penalty of one thousand dollars; and the Superintendent of Indian Affairs, Indian agent, or sub-agent, within the limits of whose agency any distillery of ardent spirits is set up or continued, shall forthwith destroy the same."

This law was enacted at a time when means of transportation were meagre, and when liquors were usually manufactured in the vicinity of their sale. In 1847 (Act of March 3), Congress enacted that "no annuities, moneys or goods shall be paid or distributed to Indians while they are under the influence of any description of intoxicating liquor nor while there are good and sufficient reasons leading the officers or agents whose duty it may be to make such payments or distribution to believe that there is any species of intoxicating liquor within convenient reach of the Indians, nor unless the Chiefs and head men of the tribes shall have pledged themselves to use all their influence and to make all proper exertions to prevent the introduction and sale of such liquor in their country."

Congress, by Act of February 13, 1862, made it a crime punishable by fine and imprisonment to sell liquors to Indians under the care of a superintendent

* Constitution, Art. I, Sec. 8.

or an agent, whether on or off the reservation. The constitutionality of this law was affirmed by the United States Supreme Court in 1865. On the revision of the law, 1873-74, it was so changed that its penalties would only apply to persons selling liquors on their reservations. But the Act approved February 27, 1877, restored the provisions of the Act of 1862, so that persons engaged in selling liquor to Indians, no matter in what locality, or who gave it to them, became liable to fine and imprisonment.

In 1864 Congress (Act approved March 15, Section 2140 R. S.) enacted the following drastic search and seizure law, which is still in full force and effect:

"No ardent spirits, ale, beer, wine, or intoxicating liq- or sub-agent, or commanding officer of a military post, has reason to suspect, or is informed that any white person or Indian is about to introduce or has introduced any spirituous liquor or wine into the Indian country in violation of law, such superintendent, agent, sub-agent, or commanding officer may cause the boats, stores, packages, wagons, sleds, and places of deposit of such person to be searched; and if any such liquor is found therein, the same, together with the boats, teams, wagons, and sleds used in conveying the same, and also the goods, packages and peltries of such person, shall be seized and delivered to the proper officer, and shall be proceeded against by libel in the proper court, and forfeited, one-half to the informer and the other half to the use of the United States; and if such person be a trader, his license shall be revoked and his bond put in suit. It shall moreover be the duty of any person in the service of the United States, or of any Indian, to take and destroy any ardent spirits or wine found in the Indian country, except such as may be introduced therein by the War Department. In all cases aris-

ing under this and the preceding section Indians shall be competent witnesses."*

The rapid development of the brewing industry and the increased facilities for transportation eventually made necessary supplemental legislation against brewery products. The following Act was accordingly passed July 23, 1892, to meet this emergency:

"No ardent spirits, ale, beer, wine, or intoxicating liquor or liquors of whatever kind shall be introduced, under any pretense, into the Indian country. Every person who sells, exchanges, gives, barters, or disposes of any ardent spirits, ale, beer, wine, or intoxicating liquors of any kind to any Indian under charge or any Indian superintendent or agent, or introduces or attempts to introduce any ardent spirits, ale, wine, beer, or intoxicating liquor of any kind into the Indian country shall be punished by imprisonment for not more than two years, and by fine of not more than three hundred dollars for each offense. But it shall be a sufficient defense to any charge of introducing or attempting to introduce ardent spirits, ale, beer, wine or intoxicating liquors into the Indian country that the acts charged were done under authority in writing from the War Department, or any officer duly authorized thereunto by the War Department. All complaints for the arrest of any person or persons made for violation of any of the provisions of this act shall be made

* The Indian Appropriation Act for 1908 (34 Stat. L. 1017), extended this authority as follows: "The powers conferred by section twenty-one hundred and forty of the Revised Statutes upon Indian agents and sub-agents, and commanding officers of military posts are hereby conferred upon the special agent of the Indian bureau for the suppression of the liquor traffic among Indians and in the Indian country and duly authorized deputies working under his supervision."

in the county where the offense shall have been committed, or if committed upon or within any reservation not included in any county, then in any county adjoining such reservation, and, if in the Indian Territory, before the United States court commissioner, or commissioner of the circuit court of the United States residing nearest the place where the offense was committed, who is not for any reason disqualified; but in all cases such arrests shall be made before any United States court commissioner residing in such adjoining county, or before any magistrate or judicial officer authorized by the laws of the state in which such reservation is located to issue warrants for the arrest and examination of offenders by section ten hundred and fourteen of the Revised Statutes of the United States. And all persons so arrested shall, unless discharged upon examination, be held to answer and stand trial before the court of the United States having jurisdiction of the offense."*

This Act, unfortunately, failed to protect from the liquor traffic Indians who had taken their lands in severalty or to whom allotments had been made. President Cleveland called attention of Congress to this situation in his message of December 7, 1896,† in which he said: "The Secretary, the Commissioner of Indian Affairs, and the Agents having charge of Indians to whom allotments have been made strongly urge the passage of a law prohibiting the sale of liquor to allottees who have taken their lands in severalty. I earnestly join in this recommendation and venture to

* This law is a revision and re-enactment of Sec. 2139, R. S.

† Messages and Papers of the Presidents, Vol. IX, p. 735.

express the hope that the Indian may be speedily protected against this greatest of all obstacles to his well being and advancement." Congress responded to this recommendation with the Act approved January 30, 1897, which reads:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who shall sell, give away, dispose of, exchange or barter, any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or other intoxicating liquor of any kind whatsoever, or any essence, extract, bitters, preparation, compound, composition, or any article whatsoever, under any name, label, or brand, which produces intoxication, to any Indian to whom allotment of land has been made while the title to the same shall be held in trust by the Government, or to any Indian a ward of the Government under charge of any Indian superintendent or agent, or any Indian, including mixed bloods, over whom the Government, through its departments, exercises guardianship, and any person who shall introduce or attempt to introduce any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or intoxicating liquor of any kind whatsoever into the Indian country, which term shall include any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be punished by imprisonment for not less than sixty days, and by a fine of not less than one hundred dollars for the first offense and not less than one hundred dollars for each offense thereafter: Provided, however, That the person convicted shall be committed until fine and costs are paid. But it shall be sufficient defense to any charge of introducing or attempting to introduce ardent spirits, ale, beer, wine, or intoxicating liquors into the Indian country that the acts charged were done un-

der authority, in writing, from the War Department or any officer duly authorized thereunto by the War Department."

This law, taken in connection with the Act approved July 23, 1892, and Section 2140 R. S. constitutes the existing legislation. The Act of 1892 is currently construed by the courts as fixing the maximum punishment, and laying down rules of procedure. The Act of 1897 is construed as fixing the minimum punishment.* This law suffered somewhat at the hands of the United States Supreme Court in the Heff case, in which it was decided (April 10, 1905) "that when the United States grants the privileges of citizenship to an Indian, gives him the benefit of and requires him to be subject to the laws, both civil and criminal, of the state, it places him outside the reach of police regulations on the part of congress; that the emancipation from Federal control thus created cannot be set aside at the instance of the Government without the consent of the individual Indian and the State, and that this emancipation from Federal control is not affected by the fact that the lands it has granted to the Indian are granted subject to a condition against alienation and encumbrance, or the further fact that

* In 1895 a special law was enacted of the most drastic character, forbidding the sale or introduction of intoxicants into the Indian Territory. This law became obsolete with the organization of the new state of Oklahoma, into which was incorporated the former Indian Territory.

it guarantees to him an interest in tribal or other property."*

This decision draws a sharp line between the operations of Federal and State law. When an Indian receives a feé simple patent to his allotment he is emancipated from Federal control. From that time he can be protected from the liquor traffic only through the operations of state law.

Following the lead of the general government, all of the states which have an Indian population have enacted more or less drastic legislation against selling liquor to Indians.

In 1906 Congress took another advance step. The Act approved June 21, (34 Stat. L. 328) appropriated "to enable the Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, to take action to suppress the traffic in intoxicating liquors among the Indians, twenty-five thousand dollars, fifteen thousand of which to be used exclusively in the Indian Territory and Oklahoma." This appropriation was renewed for the fiscal year 1908, without the restrictions as to the locus of the expenditures. The operations under these two Acts, directed by the Commissioner of Indian Affairs, met with such success that Congress appropriated $40,000 for the work for the fiscal year 1909. These operations

* On Dec. 20, 1909, the Supreme Court of the United States decided (U. S. vs. Sutton) that that part of the Act of 1897 prohibiting the introduction of liquor upon Indian allotments was valid.

were successful beyond expectations and Congress increased the appropriation for the fiscal year 1910 to $50,000 and for the year 1911 to $80,000.

From the beginning of Federal relations with the Indian tribes 1,214 different treaties have been negotiated with them. The first of these treaties to contain a definite provision eliminating the liquor traffic was that made with the Choctaw Nation in 1820.* Article XII of this treaty reads: "In order to protect industry and sobriety among all classes of the red people in the Nation, but particularly the poor, it is further provided by the parties, that the agent appointed to reside here, shall be, and is hereby, vested with full power to seize and confiscate all the whisky which may be introduced in said Nation, except that used at public stands, or brought in by permit of the agent or the principal chiefs of the three districts." This provision, at the earnest solicitation of the chiefs, was strengthened in the treaty made with the Choctaw Nation September 15, 1830. Article X of that treaty provided that "the United States shall be particularly obliged to assist to prevent ardent spirits from being introduced into the Nation."† This policy, originally promoted and insisted upon by the Indians themselves, eventually became the general plan of the Government, and in later years scarcely a treaty was negotiated with any Indian tribe that did not contain a

* Kappler: Laws and Treaties, Vol. II, p. 135.

† Ibid, p. 223.

clause obligating the Federal Government in some form to prevent the introduction of liquors into the Indian country.

Up to the year 1871 the Indian had been treated by the Government, legally, as if he were some strange monster from another world. In law he was not a citizen, he was not a woman or minor, he was not an alien, he was not a convict nor a lunatic, he was not a slave. A mass of tangled legislation had grown up regarding the status of the Indian that was incomprehensible even to the legislators themselves. Horatio Seymour attempted to describe this situation when he said: "Every human being born upon our continent, can go into our courts for protection—except those who once owned this country. The cannibals from the islands of the Pacific, the worst criminals from Europe, Asia, or Africa, can appeal to the law and courts for their rights of person and property—all save our native Indians, who, above all, should be protected from wrong."

In the Indian Appropriation Act approved March 3, 1871 (16 Stat. X. 566; carried into Section 2079 R. S.), Congress in sheer desperation provided that, "no Indian Nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent Nation, tribe, or power with whom the United States may contract by treaty." Since that time, "agreements" have been made by Congress with tribes or bands of Indians, instead of treaties. Indian

tribes, bands and individuals, henceforth, were subject to direct legislation by Congress. This was the first step toward an entirely new policy in dealing with the aborigines. The old regime had been full of mistakes. The Indians were misunderstood by the whites, and the whites were not understood by the Indians. The Government had not always sent its best men to deal with the Indians. Under the spoils system, any ward heeler too disreputable to be given a position elsewhere was often rewarded for political services by being made an Indian agent or a post-trader. The close of this period was marked by an incident which illustrates the conditions that had arisen under the old Governmental policy. During the troubles with the Apaches in 1870-71 four hundred braves had been gathered at Fort Grant, where they were fed on condition of being good. They were not very good, but still were about as good as, or better, than the whites. Massacres, troubles and scandals resulted. The Federal grand jury investigated the matter and reported:

"We find that the hostile bands of Indians in the territory are led by many different chiefs, who have generally adopted the policy of cochise, making the points where the Indians are fed the base of their supplies for ammunition, guns and recruits for their raids, as each hostile chief usually draws warriors from other bands when he makes an important raid upon the citizens, or the neighboring State of Sonora, where they are continuously making their depredations. We find that the habit of beastly drunkenness has generally prevailed, with few marked exceptions, among the officers commanding at Camp Grant, Camp Goodwin, and Camp Apache,

where the Apache Indians have been fed; that the rations issued at these camps to the Indians have frequently been insufficient for their support, and injustly distributed, sometimes bones being issued instead of meat; that one quartermaster of the United States said he made a surplus of twelve thousand of corn in issuing rations to the Indians at Camp Goodwin. We find that a commanding officer, while commanding at Camp Apache, gave liquor to the Apache Indians, and got beastly drunk with them from whisky belonging to the Hospital Department of the United States Government; also, that another officer of the United States Army gave liquor to the said Indians at said camp; that officers of the United States Army, at those camps where Indians are fed, are in the habit of using their official position to break the chastity of the Indian women; that the present regulations of Camp Grant, with the Apache Indians on the reservation, are such, that the whole body of Indians might leave the reservation and be gone many days without the knowledge of the commanding officer. In conclusion of the labors of this United States Grand Jury, we would say that five hundred of our neighbors, friends, and fellow-citizens have fallen by the murdering hand of the Apache Indian, clothing in the garb of mourning the family circle in many of the hamlets, towns and cities of all the states of our country. This blood cries from the ground of the American people for justice—justice to all men."

Beginning with the Act of 1871, referred to, the Government gradually adopted an entirely new policy in dealing with the Indian. Instead of keeping him upon a reservation, as in a zoological garden, the Indian more and more began to be treated as a responsible being. The policy of breaking up reservations, and allotting the lands to the Indians in severalty began to be inaugurated. Schools began to be

established in the Indian country itself. The Indians were encouraged to travel and mingle with the whites. The result was a better understanding between the two races. The Indians began to come into full citizenship, began to seek and obtain employment in the same vocations as the white man, began to marry and give in marriage with the Anglo-Saxon; and the Indian question, which has been a nightmare for two hundred years, begins to give promise of an ultimate solution.

The Federal Possessions.

CHAPTER VII.

When any new territory has been acquired by the Federal Government, either by conquest, theft, purchase or otherwise, it has been its policy to set up, as speedily as possible, some form of government in which the local population has more or less part. The responsibility for regulating the traffic in intoxicants has been turned over to these governments as soon as established. Section 30 of the "Act to provide a government for the Territory of Hawaii" contained the words "nor shall spirituous or intoxicating liquors be sold except under such regulations and restrictions as the Territorial legislature shall provide."* A similar course has been adopted in the case of Porto Rico and the Philippines. Posts and islands held purely for military or naval purposes are governed by military or naval governors, such government being essentially autocratic. The treatment of the liquor traffic by these governments has varied according to local conditions and the character of the governing officers. The Indian Territory, District of Columbia and Alaska have been important "possessions" governed

* Approved April 30, 1900. 31 Stat. L. p. 150.

wholly and directly by the Federal Government. These, then, may properly be considered in this connection.

From the beginning, Congress has steadily maintained the policy of prohibition of the traffic in intoxicants in the Indian Territory. This principle has again and again been affirmed in treaties with the Five Civilized Tribes. The general laws of Congress against selling liquor to Indians or "introducing" the same into the Indian country have always applied to the Indian Territory. Moreover, Congress enacted a special law* of the most drastic character, forbidding the traffic in intoxicating liquors in this territory. At times there has been much criticism of the Federal officers appointed to administer the laws, but the appointment of unsuitable men has been due to a defect of administration rather than a variation in the prohibition policy of Congress.

The District of Columbia, the territory of which is now practically identical with the City of Washington, came under the control of the Federal Government on February 27, 1801, the city being incorporated on May 3 of the following year. It was a Capital built in the wilderness. The site had previously been owned by a man named Pope, who called the place "Rome," and the east branch of the Potomac was the "Tiber." The District was formed into two counties, the one on the Virginia side, the other on

* Act approved March 1, 1895. 28 Stat. L. p. 687.

the Maryland side. The laws of Virginia were extended over the Virginia county, while the laws of Maryland prevailed in the Maryland county. A special court was created to administer these laws. The Act incorporating the City of Washington provided a city council of two houses, elected by the taxpayers who were residents. The mayor was appointed by the President. Under the original ordinances of the city council, it cost $1 per year to keep a female slave, $8 to run a saloon, and $9 to keep a female dog. The first two considerable schoolhouses were provided for by a lottery.* The license fee for a saloon remained very low, never reaching more than $100, until the passage of the Act of March 3, 1893, which raised a barroom license to $400. This has subsequently been doubled, making the present license $800.

In the history of the District an enormous amount of legislation has been enacted regulating the behavior of saloonkeepers and slaves.† So far as liquor selling is concerned, these provisions were along the same

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* In 1812 the Board of Aldermen voted to raise $10,000 for this purpose by means of a lottery. It was approved by President Madison on Nov. 23 of that year.

† In 1848 the New York Anti-Slavery Society published the "Black Code," compiled by Worthington G. Snethen, giving a text of eight Federal and twenty-eight Maryland Acts, besides 16 City of Georgetown ordinances and 29 City of Washington ordinances, all regulating the conduct of negro slaves, and all in force in the District.

lines as the average laws restricting the traffic, current at this time.

Washington had two periods of prohibition in its history. One by order of the Board of Health, and the other by a direct vote of the people. In 1830 during an epidemic, the Board of Health, acting under an opinion of Attorney General Wirt, declared the selling of liquor a nuisance and closed the shops for three months.* During the year 1853, when the agitation for state prohibition raged all over the nation, the question became an issue in the Washington City election. The "dry" ticket won by a vote of 1,963 to 991. After a lively season of intrigue, the Board of Alderman and Common Council, in October, 1854, passed an ordinance forbidding absolutely all tippling

* The text of the resolution of the Board of Health was as follows:

"The Board being fully impressed with the belief that the use of ardent spirits is highly prejudicial to health, and the corporate authorities having decided that this body possesses full power to prohibit and remove all nuisances, and the late Attorney General, Mr. Wirt, having officially given it as his opinion that the Board of Health have, under the charter and the acts of the city councils, sufficient authority to do any, and everything which the health of the city may require:

"Therefore, Resolved, That the vending of ardent spirit, in whatever quantity, is considered a NUISANCE—and, is hereby directed to be discontinued for the space of 90 days from this date.

"By order of the Board of Health."—Fifth Report American Temperance Society, p. 115.

houses.* The law, however, never went into effect. A test case† was promptly instituted and an appeal taken to the United States Circuit Court, where Judge Morsell, on December 23, decided that, while the Board had the power to regulate, it had not the power to prohibit the traffic in intoxicants. So the tippling houses remained over the protests of the voters. Congress foisted upon the people the tippling houses against their expressed wish. On July 14, 1862, these Washington whisky sellers so demoralized the Federal troops that Congress was compelled to

* The Act passed the Board proper on Sept. 25, 1854, by a vote of 10 to 3. It passed the Board of Common Council Oct. 2, by a vote of 17 to 3, and was approved by Mayor John T. Powers. The text of the ordinance was as follows:

"Be it enacted, &c. that from and after the first Monday of November next, tippling houses or shops be, and the same are hereby prohibited in the city of Washington; and it shall not be lawful after the first Monday in November, for any person in any part of the city of Washington, to sell or barter any brandy, rum, gin, whisky, or other spirituous liquors, mixed, wine or cordial, strong and lager beer, or cider, in quantities less than a pint; and any person or persons who shall sell or barter as aforesaid, shall on conviction thereof, forfeit and pay a fine for each and every offence, of twenty dollars, to be collected, and applied as other fines due this corporation; and on failure to pay said fine, or of securing the payment of the same; the person or persons so offending shall be committed to the workhouse for a term not less than seven or more than sixty days."—Washington Globe, Sept. 26, 1854; National Intelligencer, Sept. 27, 1854; Journal of the American Temperance Union, Nov. 1854, p. 167.

† Charles Werner vs. the Corporation of Washington.

act and prohibited the sale of liquor to soldiers and volunteers in the District of Columbia. The saloons were also closed during the grand review at the close of the Civil War, when two hundred thousand troops marched through the streets.

In 1871 Congress organized the District* into a full Territorial form of government, and established a legislature. The legislature, however, was so prodigal in its appropriations in its first session, that Congress decided that the people were not yet fit for self-government. In 1874 the Territorial form of government was abolished, and the present Commissioner form established, Congress making the laws directly.

During the eighties, when so many states were voting on the question of constitutional prohibition, various attempts were made to induce Congress to submit to the people of the District the question of prohibition which they had adopted by a vote of almost two to one in 1853. Early in 1884 Senator Colquitt introduced such a bill, but the final result was only the passage of an Act to raise the barroom license to $100, at which figure it remained until 1893, when it was quadrupled. Since 1906 these efforts have been renewed without result. During the winter of 1907-8, a thousand women and children of the city thronged the corridors of the Capitol on the occasion of a Committee hearing the proposal.

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* In 1846 Congress had receded that portion of the District South of the river to the state of Virginia.

ALASKA. The beginnings of civilization in Alaska were a continuous drunken orgy. The country was discovered by Russians in 1741. The Russian fur traders gave their employees rations of rum. Craftsmen were paid in rum. Even the Russian priests drew rations of rum. The Russian Governor and other officials went on frequent drunken debauches. The natives were induced to make unfavorable treaties through getting the head men drunk. The Russian-American fur company exchanged rum for furs.* In the beginning of the 19th century American and British ships began to engage in the Alaska trade along the same general principles. This led to the ukase of 1821, forbidding foreign ships from trading in these waters, which act produced such vigorous protests in America and Great Britain that the order was never carried out. The affair resulted, however, in the international treaties of 1824-5. These treaties did not permit the foreigner to traffic in spirits. Therein Russian craft won, for their traders continued the practice of giving the natives rum for their furs, and the foreigners found that without rum they could make no purchases. The always aggressive Hudson Bay Company gradually encroached upon the Russian trade, and eventually began using rum in their traffic despite treaty obligations. The competition of these

* H. H. Bancroft's Works, Vol. XXXIII, pp. 516, 519, 581, 438, 439, 463, 560; Sir Geo. Simpson's Report on the Hudson Bay Co., 1857, p. 369.

two powerful companies in the rum and fur trade so debauched the natives that they were unfitted for gathering the necessary fur. This situation led to an agreement between the two companies, in 1842, in which both companies contracted to abolish entirely the giving or bartering of rum to the natives.* This situation continued in force during the remainder of Russia's sovereignty.

The purchase of the Territory by the United States in 1867 was followed by the usual influx of gamblers, adventurers, whisky peddlers, office seekers and the dissolute of all classes. Although the actual transfer of sovereignty did not occur until October 18 of that year, the Federal Government had, months before, begun taking steps to keep out the liquor. As early as June 5, the Secretary of the Treasury had issued instructions to the collector of the Port of San Francisco to prevent the shipment of "ardent spirits." On September 2, six weeks before the transfer, Major General Halleck, in command of the Department of the Pacific, requested President Grant to declare by proclamation the newly acquired Russian territory to be "Indian country," in order to prevent the introduction of intoxicating liquors. On the following year Congress specifically authorized the President to prohibit the liquor traffic in the new country, but still the President did not act. It was not until February 8,

* Simpson: Report on the Hudson Bay Co., 1857, p. 369.

1870, that the President issued the order* forbidding the importation of distilled spirits into Alaska. There then followed a quarter of a century of prohibition, sometimes badly enforced. At first the laws were weak, but Congress was generally prompt to provide remedies when requested. The initial prosecutions, begun two years after the order, developed the fact that the Act of 1868 conferred no jurisdiction upon any court to try liquor cases. Congress remedied this with certain sections inserted into the Sundry Civil Appropriation Act† of March 3, 1873, forbidding the sale of spirits or wine in Alaska and prohibiting the erection of distilleries therein. Jurisdiction was also conferred upon the United States Courts. A few months later, the Attorney General rendered an opinion to the effect that Alaska was to be regarded as "Indian country," and that no spirituous liquors or wines could be introduced therein without an order from the War Department. In 1874 the War Department issued regulations under which liquor could be introduced for certain purposes, but these privileges were so grossly

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* The order read, "Under and in pursuance of the authority vested in me by the provisions of the second section of the Act of Congress, approved on the 27th day of July, 1868, entitled "An Act to extend the laws of the United States, relating to customs, commerce and navigation over the territory ceded to the United States by Russia.....and for other purposes, the importation of distilled spirits into and within the District of Alaska is hereby prohibited."

† 17 Stat. L. p. 530.

abused that they were withdrawn a year later. In 1875 another legal tangle developed. The law required that a prisoner must not be detained more than five days before removal. As the nearest District Court was at Portland, Oregon, a thousand miles away and only a monthly steamer was in operation, it was impossible to comply with the terms of the law, and the judges would turn the criminals loose as fast as they were arraigned. The appointment of an Indian agent for the Territory only partly improved the situation. In despair the President, in 1877, relieved the War Department of the management of the Territory and turned it over to the Treasury Department. From this period until 1884, Alaska was merely a customs district, governed by regulations made by the Secretary of the Treasury, and protected in the southeast corner by a small naval vessel. In 1881 the Treasury issued instructions to allow the importation of beer and wine, alleging that distilled spirits only were prohibited. The administration of the Treasury Department was no improvement upon that of the military, the collection of revenue being apparently the principal object of the administration. Congress, by an Act approved May 17, 1884, erected a skeleton of a government for the purchased Territory, creating a governor, judge, commissioners, district attorney and marshals, all appointed by the President. Section 14 of the Act prohibited the importation, manufacture and sale of intoxicating liquors in the district except for medicinal, mechanical and scientific pur-

poses. The President was directed to make necessary regulations to carry the law into effect.

The period from the passage of this law until 1899 was another season of scandal. It was in this period that the infamous "spoils system" began to receive its death blow, and, as with a snake, the tail died last. In political management it had become the current practice to send to a post in Alaska any politician whom it was necessary to reward, and who was too notorious a scoundrel to appoint to any position at home.* Under this system Alaska became a rival of Dahomey as an example of misgovernment and maladministration. A period of "free rum" prevailed in which lawlessness was but little restrained. This situation was pointed out as the "horrible effect of prohibition" with great industry, principally by the whisky outlaws themselves. In sheer desperation, Governor John G. Brady went to Washington and personally appealed to Congress for a high license law. Brady having gone to Alaska as a missionary twenty-five years before, his opinions had great weight. Alaska was given a high license law in the Act approved March 3, 1899. Barroom licenses were fixed at $500 to $1,500 per annum, according to the population. The usual high license restrictions, prohibition of

* In 1898 Governor John G. Brady informed the writer that by personal investigation, he found that eleven per cent of the Federal officers in Alaska at that time were under indictment for crimes of various sorts.

sales to Indians, intoxicated persons, minors, etc., prevail, but are largely ignored by the liquor dealers. Some modifications have since been made of the Act as to details. The discovery of gold in recent years has attracted such widespread attention that Alaska is apt to have more consideration at the hands of Congress in the future than in the past. The history of the country has not been a credit to the United States. For the most part, whether under prohibition or high license, it has been merely a game preserve for the whisky peddler.

Sidelights on Congress.

CHAPTER VIII.

In theory, Congress has always represented the people. In the concrete, the people have not always realized the full benefits of this high ideal. Between the real wishes of the masses and the Acts of Congress there has been an intervening dark jungle where political wolves lived, in which conventions have been manipulated, beneficent proposals ambushed, injured special interests placated, campaign funds raised, much needed votes procured by decoy methods, politicians corrupted and the desires of the people thwarted. In any contest with intrenched wrong in this wilderness, an overwhelming demonstration of public sentiment has usually been required to establish the people's will. Yet, in spite of these difficulties and discouragements, Congress has, with some discounts, modifications and marginal readings, more or less voiced the average sentiment of the nation.

The seamy side of Congressional life always had its principal center and inspiration in the two drinking establishments formerly existing in the basement of the National Capitol building in Washington. Published descriptions of life in Washington during the

first forty years of its existence were streaked with stories of scandal and Bacchanalian carousals in the gambling houses and saloons along the "corduroy" pavement* of Pennsylvania Avenue. The early sessions of Congress made Washington resemble, in a disagreeable degree, the "wide open" mining towns of the far west. Public lotteries, the duello, brazen gamblers, drunken statesmen and the raucous female were painfully in evidence.

The ebb and flow of public sentiment in moral matters has been followed by similar changes—changes for both better and worse—in the moral life of the Capital. The coming and going of the two drinking places in the halls of legislation serves well as a barometer to measure these variations. The original establishments were merely bars, and not very orderly bars—like those of the average saloon. The temperance reform, initiated as a national organized movement in 1827, had assumed extensive proportions during the thirties, during which a strong prohibition sentiment had been developing. This influence had so marked an effect on Congress that in September, 1838, a joint standing rule was adopted that "no spirituous liquors shall be offered for sale, or exhibited within the Capitol, or on the public grounds, adjacent thereto," and orders were given to the police

* The first "pavement" on the street was made by laying logs in the marsh crossways of the street and covering them with dirt. Hence the term.

officials to enforce the regulation.* While spirits were eliminated by this act, beer and wine remained, so drunkenness continued. On February 26 another amendment to the rules was adopted forbidding the sale of all intoxicating liquors, and another proposal to abolish the restaurant itself narrowly escaped passage.†

After the Civil War the conduct of the two restaurants was left to standing committees of the House and of the Senate. In this time, when public attention was distracted with the internecine strife, the sale of liquor was renewed in the building. This was accompanied by a return to the orgies of the olden time, centering in these drinking establishments in the basement. For a quarter of a century, ending with the year 1900, the inauguration of the President was accompanied by such wholesale drunkenness that these carousals were invariably made the subject of special articles by metropolitan daily papers. Several times the House passed bills to prohibit the sale of liquor in these places, but the Senate refused to concur. During the winter 1901-2, both of these restaurants were raided, the proprietors being arrested on a police court warrant charging sales of liquor without the payment of a retail license.‡ The

* Second Report, American Temperance Union, Permanent Temperance Documents, Vol. II, p. 21.

† Niles' Register, Vol. LXVI, p. 14.

‡ These warrants were sworn out by the writer and the prosecutions promoted by him.

offenders were fined $300 each. The cases were appealed to the District of Columbia Court of Appeals, where it was decided that the licensing laws of the District (Act of 1893) did not apply to the Congressional restaurants for the reason that they were under direct control of Congressional Committees and conducted for the use and convenience of members of Congress.* The object of the prosecutions, however, was attained. So much uncomplimentary discussion of the Congressional drinking "speakeasies" resulted, that Congress enacted a law prohibiting the sale of liquor within the Capitol building before the cases were finally decided.†

The "moral suasion" phase of the temperance reform has been well represented in Congress by the Congressional Temperance Society, afterwards rechristened the Congressional Total Abstinence Society. At the initiative of the American Temperance Society, February 26, 1833, was generally observed throughout the country as a day for the organization of temperance societies. Through the efforts of General Lewis Cass, a meeting was called for that date in the Senate Chambers‡ at which was formed the Congressional Temperance Society, with General Cass as President and Walter Lowrie, Secretary of the Senate,

* Page vs. Dist. of Columbia, Appeal Cases, Dist. of Col. 20 Tucker, p. 469.

† 32 Stat. L., p. 1221.

‡ These quarters are now occupied by the United States Supreme Court.

as Secretary. This society, formed on a basis of total abstinence from ardent spirits.* continued until 1842, when, through the efforts of Thomas F. Marshall, of Kentucky,† it was reorganized on a basis of total absti-

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* The preamble and first two articles of the Constitution read:

"As the use of Ardent Spirits is not only unnecessary, but injurious, as it tends to pauperism, crime, and wretchedness; to hinder the efficacy of all means for the intellectual and moral benefit of society, and also to endanger the purity and permanence of our free institutions; and as one of the best means for counteracting its deleterious effects, is the influence of UNITED EXAMPLE, Therefore, we, members of Congress, and others, recognizing the principle of abstinence from the use of Ardent Spirits, and from the traffic in it, as the basis of our Union, do hereby agree to form ourselves into a society, and for this purpose adopt the following Constitution, viz:

"Article 1. This Society shall be called THE AMERICAN CONGRESSIONAL TEMPERANCE SOCIETY.

"Article 2. The object of this society shall be, by example, and by kind moral influence, to discountenance the use of Ardent Spirit, and the traffic in it, throughout the community."

† "Tom" Marshall, after years of dissipation, had recently become a pledged total abstainer and made numerous temperance speeches in Washington and vicinity for several years. At the second public meeting of the reorganized society, Marshall began his address by saying: "Mr. President: The old Congressional Temperance Society has died of intemperance, holding the pledge in one hand and a champagne bottle in the other."

nence from all forms of intoxicating liquors and under the name of the Congressional Total Abstinence Society. George N. Briggs of Massachusetts was the first president of the reorganized concern. For eighty years the Society has held annual meetings, having a membership ranging from a dozen up to a hundred.* By virtue of the eminent men connected with the organization, it has lent dignity, character and standing to the temperance reform.

Another contribution in the same direction was the "Presidents' Declaration," a joint appeal urging the entire discontinuance of ardent spirits as a beverage, signed by twelve presidents of the United States.†

The paper, drafted by Dr. Justin Edwards in 1834, was personally presented to President Madison for his signature by Edward C. Delavan. Shortly afterwards Andrew Jackson and John Quincy Adams

* On its rolls appear such names as Lewis Cass, Henry Wilson, Millard Fillmore, Rufus Choate, Franklin Pierce, Felix Grundy, Schuyler Colfax, William Windom, John A. Logan, Lot M. Morrill, James A. Garfield, James Monroe, Frederick T. Frelinghuysen, Henry W. Blair, A. H. Colquitt, John D. Long, Nelson Dingley.

† The following are the signers, James Madison, John Quincy Adams, Andrew Jackson, Martin Van Buren, John Tyler, James K. Polk, Zachary Taylor, Millard Fillmore, Franklin Pierce, James Buchanan, Abraham Lincoln and Andrew Jackson. President William Henry Harrison died before there wan an opportunity for presenting the paper for his signature.

added their names. In commemoration of the event, silver medals were made in England and presented to President Adams and ex-Presidents Madison and Polk. Delavan during his lifetime made it a practice to ask each incoming President for his signature. The text of the "Declaration" read:

"Being satisfied from observation and experience, as well as from medical testimony, that ardent spirit, as a drink, is not only needless but hurtful; and that the entire disuse of it would tend to promote the health, virtue and happiness of the community; We hereby express our conviction, that should the citizens of the United States, and especially all young men, discontinue entirely the use of it, they would not only promote their own personal benefit, but the good of the country and the world."

Aside from the forensic contests directly connected with the Civil War, one of the most dramatic debates that ever took place in the United States Senate, and one in which Congress was shown at its best, occurred on December 19 and 20, 1849. This affair was precipitated by Senator Walker of Wisconsin, who offered the following resolution:

"Resolved, That the Rev. Theobald Mathew be permitted to sit within the bar of the Senate during the period of his sojourn in Washington."

Father Mathew was then fresh from his triumphal tour of the Eastern states, in the course of which he had administered the pledge to about 100,000 persons. Some years before, however, he had signed an address along with Daniel O'Connell, urging American Irishmen to throw their influence against slavery. This ad-

dress had been indiscreetly published by New York abolitionists at that time when reason was generally ignored in the heat of debate over this question of slavery. The publication aroused the South, and some of the Southern Senators violently attacked Senator Walker's resolution. Never before had the privilege of the Senate been extended to any civilian, foreign or domestic. General Lafayette had been the only foreigner ever accorded that honor. After the first onslaught of the Southerners, Henry Clay slowly arose and said:*

"I think, sir, that the resolution is an homage to humanity, to philanthropy and to virtue; that it is a merited tribute to a man who has achieved a great social revolution—a revolution in which there has been no bloodshed, no desolation inflicted, no tears of widows and orphans extracted; and one of the greatest which has been achieved by any of the benefactors of mankind."

Said Senator William H. Seward:

"This Capitol, its hall, its chambers, and its grounds, are filled with statuary, memorials of the illustrious benefactors of mankind, of other nations as well as our own; and these memorials are looked upon with pleasure and satisfaction by all the living. But there is a painful reflection that occurs to us when we raise these monuments to the dead. They can convey no encouragement to the benefactor in the prosecution of his philanthropic enterprises. They convey to him no sympathy in the sufferings which he endures. The resolution before the Senate presents a very different occasion—an occasion in which we can without danger of error, recognize a public benefactor of mankind; and in which the homage

* Cong. Globe, Vol. XXI, Part I, p. 51.

which is offered is unalloyed by the painful reflection that marble cannot feel and cannot hear. .....I look upon him as entitled to approbation and gratitude of the American Nation."

General Lewis Cass said:

"This is but a complimentary notice to a distinguished man just arrived among us, and well does he merit it. He is a stranger to us personally, but he has won a world-wide renown. He comes among us on a mission of benevolence, not unlike Howard, whose name and deeds rank high in the annals of philanthropy, and who sought to carry hope and comfort into the darkest cells, and to alleviate the moral and physical condition of their unhappy tenants. He comes to break the bonds of the captive, and to set the prisoner free, to redeem the lost, to confirm the wavering, and to aid in saving all from the temptation, and dangers of intemperance. It is a noble mission, and nobly is he fulfilling it. I need not stop to recount the evils which the great enemy he is contending with has inflicted upon the world—evils which are the source of a large portion of the vice and misery that human nature has to encounter. But the inundation is stayed. Higher motives, nobler aspirations, the influence of religion and the hopes of life are coming to the rescue, and are doing their part in this great work of reformation. You grant a seat here to the successful warrior returning from the conquests of war. Let us not refuse it to a better warrior—who comes from the conquests of peace; from victories achieved without the loss of blood or life, and whose trophies are equally dear to the patriot and the Christian."*

The climax of the debate came when General Sam Houston of Texas, a Southerner to the core, spoke in favor of the resolution. He said:

* Ibid, p. 53.

"I cannot view this resolution as some honorable gentlemen do; I cannot regard it, sir, as any test of merit beyond what the great Apostle of Temperance has manifested to the world by his advent to this country. Father Mathew goes not with a torch of discord, but with a bond of peace, reformation and redemption to an unfortunate class in the community. I, sir, am a disciple; I need the discipline of reformation, and I embrace it; and would that I could enforce the example upon every American heart that influences or is influenced by filial affection, conjugal love, or parental tenderness. Yes, sir, there is love, purity and fidelity inscribed upon the banner which he bears. It has nothing to do with abolition or with nullification, sir. Away with your paltry objections to men who come bearing the binnacle above turbid waters, which unfortunately roll at the foot of this mighty Republic. I bid him welcome. It has nothing to do, in my opinion with all the noise of political strife, and I am not prepared to combine it with the tariff, nullification, abolition or anything of that kind, or manufacture in any shape, unless it is the manufacture of intemperate men into sober, respectable citizens."

To the credit of the Senate, the resolution, the debate over which extended into two days, was carried by a vote of 33 to 18.

Prior to the Civil War Congress had little to do with serious legislation regarding the drink traffic. The temperance movement of the period, culminating in the widespread demand for Prohibition, looked merely to enactments by the state legislatures of prohibition laws under the police powers reserved to the states by the Federal Constitution. Congress, therefore, considered the liquor traffic merely as it was involved with the customs, internal revenue, or matters

of rations for the army and navy. It was not until twelve years after the War that Congress began probing among the vitals of the traffic in intoxicants. This movement first took the form of a demand for a "Commission of Inquiry" to investigate the effects of prohibition in the states where this policy had been adopted. The first step taken was on February 6, 1872, when a memorial was presented to Congress asking the appointment of a Commission of five or more members "Whose duty shall be to investigate the subject of prohibitory legislation and its effects upon intemperance during the period, over twenty years, covered by such legislation in Maine, Massachusetts, and other states of the Union" and "also to consider and recommend what additional legislation, if any, would be beneficial on the part of the national government for the prohibition, within its jurisdiction, of the manufacture, importation and sale of all intoxicating liquors to be used as a beverage."*

For twenty years the people clamored for this legislation. Six times the bill passed the Senate, only to be defeated in the House. While this agitation did not result in the Commission of Inquiry desired, it did result in the establishment by the House of Representatives of a "Select Committee on the Alcoholic Liquor Traffic." This Committee, first established by the Forty-sixth Congress, has been continued to the present time. A movement was organized by representa-

* Misc. Doc. No. 60, 42d Cong., 2d Session.

tives of the United States Brewers' Association in the Forty-eighth Congress to abolish this Committee. While the attempt failed, the same result, for the time being, was effected. Speaker John G. Carlisle "packed" the Committee. Of the nine members appointed, seven were opposed to having any such committee at all. * Since that time this Committee has often been used merely as a morgue in which to bury temperance proposals. At other times, however, especially during the time of Speaker Reed, this Committee has been often friendly to the temperance cause and has been the medium for accomplishing some useful legislation.

Contemporary with this agitation for a Congress-

* Dorchester, Liquor Problem, p. 700, quotes the following from the Washington Sentinel, edited by the attorney for the United States Brewers' Association, regarding this grotesque farce:

"There are few who have any idea of the anxieties and labors necessary to prevent the prohibitionists from storming the Capitol. Had not Speaker Carlisle, and, we dare say, at our urgent request, paid some attention to the doings of the House Liquor Traffic Committee, there is no doubt but that the Prohibitionists would have been successful. Though he had composed the committee of seven Democrats and only four Republicans (one of the latter a German-American) yet old Price of Wisconsin, would have carried the day, because four of the Democrats did not attend the meetings of the committee, and one of the other Democrats voted with the prohibitionists. Fortunately the absenting members finally came in, and the prohibitionists were once more defeated. Speaker Carlisle deserves the thanks of the friends of personal liberty throughout the country."

ional Commission of Inquiry, was a demand for the submission to the people, by Congress, of an amendment to the Federal Constitution, forever prohibiting the traffic in intoxicating liquors for beverage purposes. This proposal was promoted chiefly by United States Senator Henry W. Blair, who began operations by introducing into the House of Representatives, December 12, 1876, a bill to submit such an amendment to a vote of the people. The bill provided that such prohibition should begin ten years after the proposed amendment * had been ratified by three-fourths of the states. Senator Preston B. Plumb introduced a similar

* The text of this proposal was as follows:

"Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled (two-thirds of each House concurring therein), that the following amendment to the Constitution be, and hereby is, proposed to the States, to become valid when ratified by the Legislatures of three-fourths of the several states, as provided in the Constitution:

"Section 1. From and after the year of our Lord 1900 the manufacture and sale of distilled alcoholic intoxicating liquors or alcoholic liquors any part of which is obtained by distillation or process equivalent thereto, or any intoxicating liquors mixed or adulterated with ardent spirits, or any poison whatever, except for use in the arts, shall cease; and the importation of such liquors from foreign states and countries to the United States and Territories, and the exportation of such liquors from and the transportation thereof within and through any part of this country except for the use and purpose aforesaid, shall be, and hereby is, forever thereafter prohibited.

"Section 2. Nothing in this article shall be construed to

measure into the Senate of the Forty-sixth Congress. A third proposal was introduced into the Senate by Mr. Blair, then a Senator, on December 12, 1887. The first and last of these proposals were favorably reported to the Senate by the Committee on Education and Labor, but no vote was ever reached. A similar movement, one to submit the question of Prohibition to the people of the territories, met with defeat during the eighties. All of these proposals were savagely fought by the United States Brewers' Association, which, since

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waive or abridge any existing power of Congress, nor the right, which is hereby recognized, of the people of any State or Territory to enact laws to prevent the increase and for the suppression or regulation of the manufacture, sale and use of liquors, and the ingredients thereof, any part of which is alcoholic, intoxicating or poisonous, within its own limits, and for the exclusion of such liquors and ingredients therefrom at any time, as well before as after the close of the year of our Lord 1900; but until then, and until ten years after the ratification hereof, as provided in the next section, no State or Territory shall interfere with the transportation of said liquors or ingredients, in packages safely secured, over the usual lines of traffic to other States and Territories in the manufacture, sale and use thereof for other purposes and use than those excepted in the first section shall be lawful; Provided, That the true destination of such packages be plainly marked thereon.

"Section 3. Should this article not be ratified by three-fourths of the States on or before the last day of December, 1890, then the first section hereof shall take effect and be in force at the expiration of ten years from such ratification; and the assent of any state to this Article shall not be rescinded nor reversed."

its organization in 1860, has maintained a lobby in Washington and has exercised a powerful influence over legislative proposals affecting its interests. For ten years Senator Blair led this contest for National Prohibition against this influence. He led it with such vigor and persistency that his political downfall resulted.

For thirty years after its organization, the United States Brewers' Association had things practically its own way in Washington. Temperance representations were made through and by the National Temperance Society to a considerable extent. Representatives of this body frequently were heard before Committees, but its headquarters were in New York City, and no one was on the ground to "watch" and continuously care for Temperance interests. Furthermore, many of the states, during the eighties, were engaged in hand to hand contests of their own for constitutional prohibition. The high license movement had its beginnings in this period, the original "Slocumb law" having been adopted in Nebraska in 1881. Much earnest effort was expended in the promotion of this idea. It was also during this period, beginning practically in 1884, that much of the temperance propaganda was directed toward building up the Prohibition party. Under these circumstances, it is quite natural that the thirty year period ending with 1890, is

practically barren * of all Congressional legislation in the interest of the temperance reform.

The "Original Package" decision had the result of focusing the attention of the people upon Congress, and led to better things. Early in 1890, the United States Supreme Court (Leisy vs. Hardin) decided that "the state had no power, without Congressional permission to do so, to interfere by seizure, or by any other action, in the prohibition or importation and sale by a foreign or non-resident importer of liquors in unbroken original packages." Under color of this decision, the liquor dealers everywhere began opening "original package" shops, defying not only state and local prohibition laws but license laws as well. The rumsellers celebrated their victory by opening these shops in the most offensive places and in the most obnoxious manner. Joints were opened near schools and churches, and in choice resident districts of many cities. A wave of indignation spread over the country of such intensity that rioting occurred in various places. The only remedy lay in an Act of Congress. To remedy this situation, the "Wilson Law" was hurriedly passed (Approved August 8, 1890), intended to make all intoxicating liquors subject to the laws of the

* An exception is the Act of 1886 providing scientific temperance instruction in the District of Columbia, the Territories, the Military and Naval Academies, etc.

state into which they were sent.* This law was, however, weakened by the Supreme Court in a subsequent case,† in which it was decided that, while the effect of the law was to remove the Federal protection from the consignee in selling in defiance of state law, yet the words of the Act "arrival in such state" contemplated their delivery to the consignee before state jurisdiction would attach.‡

The controversy over this "Original Package" law and the prompt passage of the Wilson act led the people to look to Congress for further relief. Early in the "nineties," the Reform Bureau (now International Reform Bureau) was established in Washington as a "Christian lobby," by Dr. Wilbur F Crafts. The pioneer work of Dr. Crafts was followed up by the estab-

* The text of this law reads:

"That all fermented, distilled or other intoxicating liquors or liquids transported into any State or Territory or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

† Rhodes vs. Iowa, 170 U. S., 412.

‡ For several years Congress has been importuned to remove this obstacle to the full exercise of the police powers of the states, but, so far, the liquor dealers have been able to prevent such action.

lishment of the Legislative Department of the Woman's Christian Temperance Union, and also by the Department of the American Anti-Saloon League, and the work reduced to systematic representations. The lobby of the United States Brewers' Association was thus met on its own grounds. Since this time there has been a hand to hand contest in Washington between these two forces, the prohibitionists, step by step, gaining the ascendancy. Since the establishment of these temperance representatives in Washington they have been able to defeat practically every new move of importance on the part of the liquor interests * and have secured much positive legislation of advantage to the prohibition cause. The laws against selling liquor to Indians have been three times revised and perfected. † The beer saloon has been driven out of the Army, after a furious struggle, and large appropriations have been made to provide gymnasiums, better rations, and other things to take the place of items alleged to have been formerly supplied through the profits of beer selling. Appropriations for the mainte-

* An important exception was the overthrow of prohibition for Alaska in 1899. This movement, however, was not the result of the work of the liquor interests. John G. Brady, then Governor of Alaska, who had spent most of his life in that country as a missionary, came to Washington and personally pleaded for high license on the ground that the whisky peddlers would sell anyhow and the territory needed the revenue.

† Acts approved July 23, 1892, March 1, 1895 and January 30, 1897.

nance of soldiers' homes are now made contingent upon the prohibition of liquor selling therein. Twice the excise laws of the District of Columbia have been revised and several times amended in the interest of the prohibitionists. What is known as the "New Hebrides bill"* (Approved February 14, 1902) was passed to prohibit Americans from selling intoxicants, opium and fire arms to the unprotected natives of Pacific

* The text of this law (32 Stat. L. pt. 1, p. 33) reads:

"That any person subject to the authority of the United States who shall give, sell, or otherwise supply any arms, ammunition, explosive substances, intoxicating liquor, or opium to any aboriginal native of any of the Pacific Islands lying within the twentieth parallel of north latitude and the fortieth parallel of south latitude and the one hundred and twentieth meridian of longitude west and one hundred and twentieth meridian east of Greenwich, not being in the possession or under the protection of any civilized power, shall be punishable by imprisonment not exceeding three months, with or without hard labor, or a fine not exceeding fifty dollars or both. And in addition to such punishment all articles of a similar nature to those in respect to which an offense has been committed found in the possession of the offender may be declared forfeited.

"Sec. 2. That if it shall appear to the court that such opium, wine, or spirits have been given bona fide for medical purposes it shall be lawful for the court to dismiss the charge.

"Sec. 3. That all offenses against this act committed on any of said islands or on the waters, rocks, or keys adjacent thereto shall be deemed committed on the high seas on board a merchant ship or vessel belonging to the United States, and the courts of the United States shall have jurisdiction accordingly."

Islands. In 1895 Congress directed the Bureau of Labor to investigate the economic aspects of the liquor problem. The published results of these investigations, made under the direction of Carroll D. Wright, have provided much "ammunition" for the prohibitionists ever since. The prohibitionists won another decided victory in the "Act to regulate the immigration of aliens into the United States," approved March 3, 1903. Section 30 of the Act * governing the letting of eating privileges at immigrant stations, provided "that no intoxicating liquors shall be sold in any such immigrant station." It was during the consideration of this bill that the scandal over the criminal prosecutions of the unlicensed drink sellers in the basement of the Capitol was at its height. To end the matter, a clause was inserted in this immigration act providing that "no intoxicating liquors of any character shall be sold within the limits of the Capitol building of the United States." The constitutional validity of such a clause in an act to "regulate immigration" is open to grave question, but Congress is not apt to contest its own enactment.

It was during this period that the United States took her place among the civilized nations of the earth in protecting the natives of the Congo Free State from the whisky peddler. The "Brussels Conference," held in 1890, decided to establish a zone around the district in which the sale of distilled spirits should be prohib-

* 32 Stat. L., p. 1220.

ited. Within two years seventeen leading nations of the earth had ratified this convention, including Persia and Turkey. It was not until December 14, 1899, that the United States became a party to this agreement for the "Zone de prohibition." A supplemental agreement of the second Conference, that of 1899, was also ratified. It was in pursuance of this new policy of the Government, that, on January 4, 1901, Henry Cabot Lodge introduced into the Senate the following resolution, which was adopted:

"RESOLVED. That in the opinion of this body the time has come when the principle, twice affirmed in international treaties for Central Africa, that native races should be protected against the destructive traffic in intoxicants. should be extended to all uncivilized peoples by the enactment of such laws and the making of such treaties as will effectually prohibit the sale by the signatory powers to aboriginal tribes and uncivilized races of opium and intoxicating beverages."

Congress, like all representative bodies, is never up to the millennium standard. It contains representatives of the worst as well as the best elements of society. In the passage of a bill, the vote of the one counts as much as that of the other. Congress represents approximately the average public sentiment on any reform. But the burden is on the reformer to get even this average sentiment expressed in legislation. It is for him to assume the aggressive. Vested interests in iniquity are on the defensive and have the advantage of being already intrenched in legislation. But the standard of Congress is becoming higher with each succeeding election. The unfit are one by one left upon

the scrap heap. There is less incentive for a Congressman to become the puppet of the liquor interests than formerly, and there is correspondingly greater inclination to relieve the people of the burdens of the licensed liquor traffic. Under the present system of representation there are many ways for intrenched wrong temporarily to hold its position by bullying, bribing, trickery and various forms of chicanery. The ultimate triumph of right may thus be deferred, betrayed, or compromised, but never finally defeated.

CONSUMPTION OF LIQUORS IN THE UNITED STATES SINCE 1790.

Fiscal Year	Gallons Consumed				Gallons Per Capita Coosumed			
	Spirits	Wines	Malt Liquors	Total	Spirits	Wines	Malt Liqu'rs	Total
1790	6,448,846	1,088,455						
1791	6,139,898	916,256						
1792	6,911,570	1,269,723						
1793	5,063,015	1,507,483						
1794	6,603,262	2,494,352						
1795	6,325,610	3,357,960						
1796	7,253,855	2,219,905						
1797	7,820,190	2,041,413						
1798	5,756,925	1,364,963						
1799	8,464,241	1,807,501						
1800	7,348,222	1,679,185			1.38	0.31		
1801		1,230,768						
1802		1,777,388						
1803		1,860,003						
1804		2,735,923						
1805		2,742,010						
1806		661,410						
1807		2,387,844						
1808		2,105,802						
1809		548,068						
1810	29,890,539	1,164,592			4.11	0.16		
1811		1,553,088						
1812		1,658,630						
1813		701,246						
1814	8,956,852	404,793						
1815	14,391,493	1,089,587						
1816	13,171,234							
1817	8,342,897							
1820		1,754,322				0.12		
1821		2,885,410						
1822		2,731,660						
1823		1,990,584						
1824		1,310,731						
1825		2,363,132						

1826		2,749,460							
1827		2,700,503							
1828		2,339,016							
1829		2,814,088							
1830		2,666,594					0.21		
1831		2,893,609							
1832		5,521,631							
1833		3,514,992							
1834		4,479,820							
1835		6,095,015							
1840	43,060,884	4,873,096	23,310,843	71,244,823	2.52	0.29	1.36	4.17	
1850	51,833,473	6,316,393	36,563,009	94,712,875	2.23	0.27	1.58	4.08	
1860	99,968,651	10,933,981	101,346,669	202,249,301	2.86	0.35	3.22	6.43	
1863	17,409,596		62,372,465		0.52		1.87		
1864	87,002,067		97,770,584		2.55		2.87		
1865	17,484,302		113,623,255		0.50		3.27		
1866	15,577,386		159,153,746		0.44		4.49		
1867	15,883,460		193,060,149		0.44		5.33		
1868	8,453,485		191,289,305		0.23		5.17		
1869	63,443,582		197,483,238		1.68		5.23		
1870	79,895,708	12,225,067	204,756,156	296,876,931	2.07	0.12	5.31	7.70	
1871	64,059,661	15,831,500	241,138,127	321,029,288	1.62	0.40	6.10	8.12	
1872	68,422,280	16,682,024	270,298,916	355,403,220	1.68	0.41	6.66	8.75	
1873	68,037,139	18,847,031	300,697,262	387,581,432	1.63	0.45	7.21	9.30	
1874	64,540,099	20,468,714	299,521,065	384,529,869	1.51	0.48	7.00	8.99	
1875	66,120,558	19,991,326	294,953,157	381,065,041	1.50	0.45	6.71	8.67	
1876	59,983,890	20,161,777	308,336,387	388,482,054	1.33	0.45	6.83	8.61	
1877	59,420,118	21,875,987	304,926,667	386,222,772	1.28	0.47	6.58	8.33	
1878	51,931,941	22,263,596	317,969,352	392,164,889	1.09	0.47	6.68	8.24	
1879	54,278,475	24,376,813	344,605,485	423,260,773	1.11	0.50	7.05	8.66	
1880	63,526,694	28,098,179	414,220,165	505,845,038	1.27	0.56	8.26	10.08	
1881	70,607,081	24,143,021	444,112,169	538,862,271	1.38	0.47	8.65	10.50	
1882	73,556,976	25,562,694	526,379,980	625,499,650	1.40	0.49	10.03	11.92	
1883	78,452,687	25,777,571	551,479,340	655,727,598	1.46	0.48	10.27	12.21	
1884	81,128,581	20,481,927	590,016,517	691,627,025	1.48	0.37	10.74	12.66	
1885	71,416,709	21,905,712	596,102,038	689,424,459	1.27	0.39	10.62	12.28	
1886	73,229,114	25,566,772	643,179,459	741,975,345	1.28	0.45	11.21	12.93	
1887	71,072,794	32,324,514	717,972,313	821,369,621	1.21	0.55	12.24	14.00	
1888	75,845,352	36,334,818	766,491,812	878,671,982	1.26	0.61	12.78	14.65	
1889	80,613,158	34,145,710	780,122,461	894,881,329	1.32	0.56	12.73	14.60	
1890	87,829,623	28,945,993	855,929,559	972,705,175	1.40	0.46	13.67	15.53	

Fiscal Year	Gallons Consumed				Gallons Per Capita Consumed			
	Spirits	Wines	Malt Liquors	Total	Spirits	Wines	Malt Liqu'rs	Total
1891	91,157,565	29,083,309	947,230,219	1,067,471,393	1.43	0.46	14.84	16.72
1892	97,301,840	28,264,627	989,309,832	1,114,876,299	1.49	0.43	15.24	17.13
1893	101,287,753	31,636,291	1,074,441,071	1,207,365,215	1.52	0.48	16.19	18.20
1894	90,541,209	21,882,840	1,036,023,535	1,148,447,584	1.34	0.32	15.32	16.95
1895	78,655,063	20,863,877	1,043,033,486	1,142,552,426	1.14	0.30	15.13	16.57
1896	70,725,745	18,701,405	1,113,465,966	1,202,893,116	1.01	0.27	15.85	17.12
1897	73,029,948	38,271,478	1,069,640,208	1,180,941,634	1.02	0.53	14.94	16.50
1898	81,594,293	20,568,023	1,164,500,101	1,266,662,417	1.12	0.28	15.96	17.37
1899	87,433,442	26,360,499	1,136,380,908	1,250,174,849	1.18	0.35	15.30	16.82
1900	97,356,864	29,988,467	1,222,387,104	1,349,732,435	1.28	0.39	16.02	17.69
1901	103,455,338	28,396,520	1,259,060,444	1,390,912,302	1.33	0.37	16.22	17.91
1902	107,726,141	49,763,920	1,382,369,176	1,539,859,237	1.36	0.63	17.50	19.49
1903	117,669,954	38,238,818	1,450,308,350	1,606,217,122	1.46	0.48	18.04	19.98
1904	121,087,387	43,311,217	1,499,378,215	1,663,776,829	1.48	0.53	18.34	20.35
1905	120,869,649	35,059,717	1,538,526,610	1,694,455,976	1.45	0.42	18.50	20.38
1906	127,851,583	46,485,223	1,700,421,221	1,874,758,027	1.52	0.55	20.19	22.26
1907	140,084,436	57,738,848	1,822,313,525	2,020,136,809	1.63	0.67	21.24	23.54
1908	125,379,314	52,121,646	1,828,732,448	2,006,233,408	1.44	0.60	20.98	23.02
1909	121,130,036	61,779,549	1,752,634,426	1,935,544,011	1.37	0.70	19.79	21.85
1910	133,538,084		1,851,340,256		1.43		19.80	

The statistics from 1790 to 1799 inclusive, are compiled from Statements to Congress by Joseph Nourse, Register of the Treasury, dated December 12, 1801—American State Papers, Volume I, pp. 707–708.

The statistics for 1800 are from calculations in "Temperance Progress in the Nineteenth Century" by Woolley and Johnson.

The statistics from 1801 to 1825 inclusive as to wines are taken from the Sixth Report of the American Temperance Society, appendix.

The statistics as to spirits for the years 1814–17 inclusive are taken from a statement made by Joseph Nourse, Register of the Treasury, dated May 16, 1832—House Reports 225, Nineteenth Congress, First Session.

The statistics as to wines from 1826 to 1835 inclusive, are taken from the report of the American Temperance Union for 1837.

The statistics given from 1840 to the present time are taken from the Statistical Abstract of the United States.

The above statistics do not include data with respect to commerce between the United States and Insular Possessions for the year 1901.

The marked variations in the statistics for the consumption of spirits from 1863 to 1869 are due to the manipulation of the revenue laws in the interest of whisky jobbers, as set forth in Chapter 3. These statistics of consumption of spirits are based upon the withdrawals from bonded warehouses for each year.

NUMBER OF SPECIAL TAXPAYERS AS RETAIL LIQUOR DEALERS AND RETAIL DEALERS IN MALT LIQUOR IN THE UNITED STATES SINCE 1876.

Year-ending June 30.	Special Taxpayers		Total
	R. L. D.	R. D. M. L.	
1877	156,634	7,964	164,598
1878	157,345	9,499	166,844
1879	155,850	10,636	166,486
1880	163,525	11,610	175,135
1881	170,640	8,536	179,176
1882	168,770	8,006	176,776
1883	187,871	7,998	195,869
1884	180,068	8,220	188,288
1885	182,318	8,676	190,994
1886	190,121	8,409	198,530
1887	188,107	8,685	196,792
1888	168,587	8,161	176,748
1889	188,675	7,899	196,574
1890	189,002	7,798	196,800
1891	230,408	10,389	240,797
1892	215,434	10,031	225,465
1893	219,863	10,073	229,936
1894	215,419	12,618	228,037
1895	208,388	10,486	218,874
1896	204,294	12,064	216,358
1897	194,942	11,076	206,018
1898	195,964	12,071	208,035
1899	199,729	12,327	212,056
1900	207,525	12,716	220,241
1901	213,416	13,131	226,547
1902	220,636	13,754	234,390
1903	227,763	14,468	242,231
1904	230,056	13,826	281,651
1905	241,239	14,976	293,966
1906	243,400	17,094	298,271
1907	236,448	18,266	296,834
1908	230,512	20,434	296,789
1909	223,504	21,681	293,163
1910	217,813	19,655	237,468

During the years 1877-80 wholesale dealers in malt liquors are included with retail dealers.

The figures for 1891 cover a period of fourteen months.

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